

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.3464 of 2018

ORDER :

This revision is filed against order dated 31.03.2018 in IA.No.357 of 2018 in O.S.No.59 of 2017 passed by the Principal District Judge, Vizianagaram.

The application IA.No.357 of 2018 is filed under Order VII, Rule 11 CPC., to reject the plaint filed.

The plaint O.S.No.59 of 2017 is filed seeking recovery of Rs.73,90,000/- from the petitioner/defendant. The recovery is sought on the basis of an alleged breach of the terms and conditions of Memorandum of Understanding (MOU) dated 12.09.2014.

After the suit is filed, IA.No.357 of 2018 is filed stating that the frame of the suit is bad. According to petitioner, a suit for specific performance should be filed and a suit for recovery of money is not maintainable. The respondents filed a counter opposing the application. It is reiterated that there is no cause of action for filing the petition and that there is a cause of action to file the suit.

After hearing both the counsels, the Principal District Judge, Vijaynagaram rejected the application by his Order dated 31.03.2018. Questioning the said rejection order, the revision is filed.

This Court has heard Sri. M.M.M.Srinivasa Rao, learned counsel for the petitioner and Smt.Sri Devi, learned counsel for the respondent.

The counsel for the petitioner argued that as per the MOU, payment of money through cheques and transfer of shares are interlinked. Therefore, he contends that a bare suit for recovery of money does not lie. It is his contention that a suit for specific performance should be filed. In addition, he submits that the Judge committed an error in looking for evidence about the resignation of the plaintiff. He also argues that there is no enforceable debt since the plaintiff did not submit the resignation.

In reply thereto, the learned counsel for the respondent argues that as per the settled law on this subject, for rejection of the plaint, the Court should only look into averments of the plaint and that if the plaint discloses even a little cause of action, the plain cannot be rejected. The learned counsel submits that it cannot be said that there is no cause of action or that the payment in Clauses 2 and 3 is linked to the resignation in Clause 1. The failure to pay the amounts as is visible from the dishonor of the cheques gives rise to the cause of action according to the learned counsel. She also relies upon the judgment of Hon'ble Supreme Court of India in ***Kuldeem Singh Pathania v. Bikram Singh Jaryal***¹

¹ AIR 2017 SC 593

and argues that if the plaint discloses a semblance of a cause of action, no order can be passed under Order VII Rule 11 of CPC., even if the Court is of the opinion that the plaintiff may ultimately fail. She therefore supports the order.

This Court, after hearing both the counsels, is of the opinion that the overall understanding of the Judge while passing the impugned order is correct, but he committed an error in looking for oral evidence whether the respondent submitted his resignation or not. Only the plaint averments should be looked into in deciding the application under Order VII Rule 11 CPC. Finally, however the Court came to a conclusion that there is a cause of action. This Court also after examining the plaint notices that the cheques were returned unpaid due to lack of funds. There is clear pleading that one cheque dated 12.09.2014 and two cheques dated 01.12.2014 were returned unpaid due to lack of funds in the account. Similarly, it is pleaded that the subsequent cheque dated 01.08.2015 was also returned. It is also mentioned that the complaint under Section 138 of Negotiable Instruments Act, was filed and that a notice dated 18.11.2015 was also issued. Thereafter, the suit is filed.

On a review of these facts and the settled law on this subject, the Court is of the opinion that the plaint discloses a cause of action; whether the plaintiff is entitled to a money decree without resigning as a director etc, is a matter to be

decided at the trial. The plaint reveals a cause of action and it cannot be said there is no cause of action at all. The plaintiff is the *dominant litus* and it is for him to plead and prove his cause and seek an appropriate relief. The mere fact that as per the respondent a suit for Specific Performance should be filed cannot lead to a conclusion that this plaint is to be rejected.

Therefore, after listening to the submissions of the learned counsels and considering the settled case law on this subject, this Court is of the opinion that the plaint discloses a cause of action. Therefore, the plaint cannot be rejected at this stage. The ultimate conclusion of the Court below does not suffer from any defect warranting interference by this Court.

The Court finds no merits in the revision. Accordingly, the same is dismissed.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

Date:11.10.2018
KLP

D.V.S.S.SOMAYAJULU, J