

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4131 OF 2011

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 02.06.2011 in I.A. No.3083 of 2008 in O.S. No.511 of 2008 passed by the I Additional District Judge, Rangareddy District, at L.B. Nagar, Hyderabad, dismissing the application filed under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (for short 'CPC').

The petitioners are the defendants 2 to 12, 15, 17 to 19 in the suit. They filed a petition under Rule 11 of Order VII of CPC contending that the first respondent filed the above suit seeking a decree for mandatory injunction directing the defendants 2 to 19 to admit him as one of the partners, in place of the first defendant, in the firm M/s.Balaji Developers with proportionate rights over the assets of the firm and consequential decree of injunction restraining the defendants from alienating the schedule property pending disposal of the suit.

The specific contention of the petitioners that they were unnecessarily impleaded in the above suit without any cause of action against them and thus the suit is liable for misjoinder of necessary parties and other ground raised in the petition is that when the plaint did not disclose cause of action, the plaint is to be rejected. It is the contention of the petitioners that the firm borrowed an amount of Rs.2.50 crores from Syndicate Bank and invested the same in the firm as capital. As such the allegations of the plaintiff, who is the first respondent herein, that they invested the amount taken from the plaintiff, in the firm for running the business, is false and incorrect; the plaintiff never made any

communication with regard to his alleged money being invested by the first defendant in the firm. The partners of the first defendant never gave consent for induction of the plaintiff into the D'2 firm and that there was no cause of action against the petitioners and that the claim is barred by law and sought to reject the plaint at the threshold.

The plaintiff/ first respondent filed counter in the I.A. denying the material allegations *inter alia* contending that the petition is filed misrepresenting the facts that they are unnecessarily impleaded in the suit without any cause of action. The alleged collusion between himself and the first defendant in securing money and investing in the second defendant firm is neither true nor correct and that there is cause of action against these petitioners in the suit to claim mandatory injunction. The first defendant obtained a sum of Rs.2.50 crores from the plaintiff/ first respondent and invested in the second defendant firm - M/s.Balaji Developers and this fact is to be proved, disputed question of fact is to be proved only by adducing evidence and therefore, the plaint cannot be rejected at the threshold since the disputed question of facts cannot be decided at this stage and that the claim is not barred by any other law.

Upon hearing argument of both the counsel, the trial court held that it cannot be decided at the threshold exercising power under Rule 11 (a) and (b) of Order VII of CPC and dismissed the I.A. Aggrieved thereby, the present revision is filed raising several contentions mainly on the ground that to admit a new partner, consent of all the existing partners is necessary in view of Section 31 of the Indian Partnership Act, 1932 (for short 'the Act'). But

when the petitioners refused to give consent, mandatory injunction cannot be granted to induct the first respondent/ plaintiff in the firm; the trial court also failed to exercise jurisdiction under Rule 11 of Order VII of CPC and committed an error to reject the plaint. The alleged investment of an amount of Rs.2.50 crores received by the first defendant is not with the consent of any partners and such acts are not binding and therefore, the plaintiff cannot claim any relief against the petitioners/ defendants, but the trial court committed grave error in dismissing the petition and prayed to set aside the order passed by the trial court.

During hearing, learned counsel for the petitioners contended that when consent of other partners is required under Section 31 of the Partnership Act, they cannot be compelled to induct the first respondent/ plaintiff as a partner of the second defendant firm and merely because the first respondent/ plaintiff allegedly invested an amount of Rs.2.50 lakhs is disentitled to claim such relief, his remedy is otherwise and apart from that the plaint did not disclose any cause of action, it shall be rejected at the threshold, the trial court, made the petitioners to undergo ordeal of trial for a long period, committed an error in dismissing the petition. In support of his contention, he placed reliance on the judgment of this Court reported in **Novartis Consumer Health India Pvt. Ltd., Mumbai v. Vijaya Sai Medical Distributor, Hyderabad and others**¹. On the strength of the principles laid down in the above judgment, the trial court dismissed the petition for rejection of plaint.

¹ 2009(5) ALD 157

Per contra, learned counsel for the first respondent/ plaintiff contended that when the suit is filed for mandatory injunction to induct the first respondent/ plaintiff as a partner, having invested an amount of Rs.2.50 crores through the first defendant, in the D.2's firm and entered into a memorandum of agreement, he can maintain a suit and there is cause of action against the partners also and their acts as partners in the firm, as per the provisions of the Indian Partnership Act and they gave consent or not is a question to be decided during trial, therefore, the plaint cannot be rejected at the threshold and placed reliance on two judgments of this Court reported in **Anand Paraboiled Rice Mill (P) Ltd., v. G.Yadaiah @ Garika Yadagiri and others**² and in **Mustigulla @ Namaswamy Hemanth Kumar v. Abhaya Infrastructures Pvt. Ltd., and Others**³ and prayed to dismiss the revision petition.

Considering the contentions of both the counsel, the point that arise for consideration is,

Whether the plaint did not disclose any cause of action against the petitioners/ defendant Nos.2 to 12, 15 and 17 to 19 to claim relief of mandatory injunction and consequential relief of perpetual injunction? If not, whether the plaint shall be rejected at the threshold by exercising power under Rule 11 (a) of Order VII of CPC?

POINT:

The first respondent/ plaintiff filed the suit for mandatory injunction against the defendants to induct him as a partner in the place of the first defendant on the ground that he invested an amount of Rs.2.51 crores by different modes of transfer mentioned in paragraph 2 of the plaint and entered into a memorandum of

² 2016(6) ALD 82

³ 2016(6) ALD 598

agreement with the first defendant. It is specifically averred that the first defendant, without knowledge or permission utilized the money of the plaintiff, constituted partnership firm along with 17 other partners and the first defendant is figuring himself as partner No.12 in the partnership deed and the partnership deed is totally silent for capital investment by each of the partners. It is also found that partners 1 to 12 are entitled to 80% share equally and partners 13 to 18 are entitled to 20% share equally among them and clause-4 of the agreement indicates that the capital required to be shared as per clause 3, the office address of the firm is shown as Plot No.136, Sairam Nagar, Karmanghat, R.R. District., which is the residential address of defendant No.7. The first defendant opened the firm "Balaji Developers" with the money of the plaintiff, introducing 17 others as partners. When the plaintiff contacted the first defendant, first in the year 2006, the first defendant came out with cock and bull story and informed that it would be extremely profitable to the plaintiff to open new firm and to invest money in the firm, instead of purchasing lands with the money and executed memorandum of understanding dated 20.12.2017 and stated that the plaintiff also should execute the memorandum of understanding, accordingly, the first respondent/plaintiff signed on memorandum of understanding and the first defendant executed voluntarily a Deed of retirement dt. __.11.2017 (undated) and subsequently he executed another retirement deed to maintain consistency for admission of the plaintiff as a partner in the firm with effect from the same date, became the retirement deed dt. __.11-2017 (undated). Thereafter the first defendant executed a deed of retirement dt.06.12.2007

and expressed that he would arrange for execution of the same by other partners also, but till date the same has not taken place. He also prepared partnership deed dt.06.12.2007 after incorporating the name of the plaintiff as a partner in the place of first defendant with effect from 06.12.2007 taking over the capital investment in the name of the plaintiff, which stands in the first defendant under partnership deed on 18.08.2006. But the petitioners and other partners failed to admit him as a partner in place of the first defendant, in the second defendant firm. Therefore, filed suit for the relief claimed in the suit.

The main endeavour of the counsel for the petitioners is that when the plaint does not disclose any cause of action against the defendants, it is liable to be rejected exercising power under Rule 11 of Order VII of CPC. Cause of action is not defined anywhere. But the law laid down by various courts that defined that cause of action is a bundle of facts which gives rise cause to file a suit or proceeding against other. The word 'cause of action' was not defined anywhere in C.P.C. But, it can be said to be a cause which gives rise to file a suit i.e. to claim remedy in the Court. Non-disclosure of cause of action in the plaint is a ground to reject the plaint, but the Court cannot decide whether the cause of action disclosed in the plaint is true or not at the time of deciding the application under Order VII Rule 11 C.P.C.

On bare look at the plaint, the plaint discloses cause of action, the truth or otherwise in the alleged cause of action is irrelevant. When the plaint did not disclose cause of action and the cause of action is illusory due to clever drafting of the plaint, the plaint shall be rejected at the threshold, on the date when the

parties were examined under Order X of CPC, exercising power under Rule 11 of Order VII of CPC as held by the Apex Court in **T.Arivandandam v. T.V. Satyapal**⁴ and in **Saleem Bhai v. State of Maharashtra**⁵. Thus the cause of action is not isolated act of an individual. This Court, in **Sri Laxmi Co-operative Housing Society Ltd., v. G.V.Mohan and Ors.**,⁶ made an endeavour to define what is cause of action relying on various judgments of the Apex Court and other Courts with reference to Rule 11 of Order VII of CPC referring to **T.Arivandandam's case**, **Saleem Bhai's case**, **Sopan Sukhdeo Sable and Ors., v. Assistant Charity Commissioner**⁷, and **Raj Narain Sarin v. Laxmi Devi**⁸

In addition to that, court also referred the judgments of the Apex Court in **Patasibai and Ors., v. Ratanlal**⁹ and in **ITC Limited v. Debts Recovery Appellate Tribunal**¹⁰ and held that when the plaint does not disclose cause of action, the plaint is liable to be rejected.

Similar view was expressed by the Supreme Court in **Hardesh Ores Pvt. Ltd. v. Hede and Company**¹¹. In paragraph 10 of the said judgment, it is specifically held as follows:

“10. An application was filed on behalf of the respondent under Order VII Rule 11 of the Code of Civil Procedure submitting that there was absence of cause of action and also the plaint was barred by limitation. Subsequently, the plea of absence of cause of action was given up and only the plea of bar of limitation under the Limitation Act was pressed. It was submitted that Article 54

⁴ 1978(1) SCR 742

⁵ 2002 SUPP 5 SCR 491

⁶ 2006(1) ALD 607

⁷ AIR 2004 SC 1801

⁸ (2002) 10 SCC 501

⁹ (1990)1 SCR 172

¹⁰ AIR 1998 SC 634

¹¹ (2007) 5 SCC 614

of the Limitation Act applied and that a suit for specific performance of the contract should have been filed within 3 years from the date the appellant-plaintiff had notice that the renewal of the agreement was refused by the respondent. In the instant case the refusal was communicated on 29.12.2001 and, therefore, the suit should have been filed within 3 years thereafter.”

Thus, in view of perspective pronouncements of other Courts, it is clear that any act done by one party giving rise to file suit or proceeding is a cause of action for the suit. While deciding whether the cause of action to file a suit, the court has to scrutinize the allegations made in the plaint, but not the cause of action paragraph in the plaint alone.

Here in this case in the plaint several allegations were made including the investment of Rs.2.51 crores through account transfer to the account of the first defendant, who in turn executed certain documents i.e. memorandum of understanding, retirement deed referred supra to induct the plaintiff in place of the first defendant as a partner of the second defendant firm M/s. Balaji Developers, but he was not inducted as a partner inspite of his demands. Therefore, he filed the suit.

The main endeavour of the counsel for the petitioners/defendants 2 to 12, 15, 17 to 19 is that when the cause of action is illusory, the plaint is liable to be rejected and placed reliance on the judgment of this Court in **Novartis Consumer Health India Pvt. Ltd., Mumbai** referred supra, wherein the single Judge of this Court held as follows:

“8.Law requires the existence of a ‘cause of action’ in favour of a plaintiff, before he can file a suit against a defendant. In a catena of decisions, the expression ‘cause of action’ was explained as a bundle of facts that create a right in a plaintiff to sue the defendants. Rule 11 of Order 7 enlists the circumstances

under which, a civil court can reject a plaint. Clause (a) enables a Court to reject a plaint, “*where it does not disclose a cause of action*”

9. Though the expression ‘cause of action’ cannot be defined with an amount of precision, it is not difficult to discern it. Before a plaintiff in a suit can complain of violation or infringement of his rights, he must state the nature of such right, and the manner in which it has accrued to him. By its very nature, the right presupposes existence of two individuals, or sets of persons: the one, who is the beneficiary or the enjoyer of such right, and the other, who is under obligation to respect it, or to create the atmosphere for such enjoyment. The obligation may arise out of a contract or by operation of law. While asserting his right and the corresponding obligation of the other individual, the plaintiff must assert not only the content of his right, but also the manner in which it has accrued to him, and as to how the defendant in the suit is under obligation to respect it. It is only then, that a cause of action can be said to have existed for the plaintiff to file the suit.

10. Howsoever grave the violation of a right that is vested in a plaintiff may be, he just cannot enforce it against a person, who is not placed under obligation, by law, to respect such a right.

11. In the instant case, the source of rights claimed by the 1st respondent is the DCB. To be more precise, he did not claim the rights against the defendants by operation of law, or any custom or commercial practice. Admittedly, it is only the 3rd respondent, that is a party to the agreement, or contract. Nowhere in the entire contract, any mention is made to the petitioner herein, much less, to any activity undertaken by it. The petitioner owes no obligation to the first respondent, much less to abide by the terms of the contract between the respondents 1 and 2. As a result, even if there is any violation of the terms of the DCB agreement, there does not exist any occasion for the first respondent, to seek any relief against the petitioner.

12. There may be instances, where, in the absence of any definite contract also, relief in the form of declaration, as to right of a plaintiff, vis-à-vis the defendant, can be claimed. In such an event, though the relevant facts pleaded in the plaint, may not, by themselves constitute the cause of action; would be verified, and adjudication would be undertaken as to the feasibility of granting the declaratory relief. Relief of injunction, whether perpetual or mandatory, would be consequential in such cases. Admittedly,

the first respondent did not seek any relief of declaration in the instant suit, much less against the petitioner. Therefore, there did not exist any cause of action for the first respondent to file the suit against the petitioner.”

But in the latter judgment in **Mustigulla @ Namaswamy Hemanth Kumar v. Abhaya Infrastructures Pvt. Ltd., and Others**¹² the Division Bench of this Court had an occasion to deal with similar circumstance and the Division Bench of this Court relying on the Judgments in **Raptakos Brett & Co. Ltd., v. Ganesh Property**¹³, **Sopan Sukhdeo Sable and others** referred supra and **T.Arivandandam** referred supra and held that the entire allegations of the plaint have to be verified to find out whether discloses cause of action or not. The same was expressed by the Single Judge of this Court in **Anand Paraboiled Rice Mill (P) Ltd.** Referred supra. It is an admitted fact that the petitioners are partners of the second defendant firm along with the first defendant and Section 18 of the Act deals with relationship between the partner and the firm, subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm. Section 19 of this Act deals with implied authority of partner as agent of the firm, which permits the partners Subject to the provisions of Section 22, the Act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”. In the absence of any usage or custom or trade to the contrary, the implied authority of a partner does not

¹² 2016(6) ALD 598 (DB)

¹³ 1998(5) ALD (SCSN) 31-1

empower him to exercise such power as enunciated in clause (a) to (g) of Section 19.

Section 20 of the Act deals with Extension and restriction of partner's implied authority. According to it, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Section 22 of the Act deals with Mode of doing act to bind firm. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm. Section 23 of the Act deals with effect of admissions by a partner, according to it, an admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Thus, in view of the various provisions referred supra, the act of partners binds the firm and every partner is liable to the acts of the other partners subject to contract to the contrary. But the firm is not liable for wrongful acts of the partner, and the acts done by the first defendant is wrongful act or not is a question to be decided only at the end of trial.

But at this stage it is difficult to conclude that the acts done by the first defendant will not give rise to any cause of action, the first respondent filed the suit for the relief as stated above. Therefore, it is difficult to hold at this stage that the plaint did not disclose cause of action in view of specific allegation made in the earlier paragraphs.

One of the specific contention raised by the counsel for the petitioner is that consent of all other partners is required to decide

whether to induct the third party as a partner and drawn the attention of this Court to Section 31 of the Act. According to Section 31 of the Act, Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners; Subject to the provisions of Section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Section 30 of the Act deals with admission of minors for the benefit of partnership, but this section is not relevant in deciding the real controversy. Even according to clause (1) of Section 31 of the Act, consent of the other partners is required subject to contract between the parties. If the contract is otherwise, to induct any person in a firm, no consent is required. The partnership deed is not placed on record to find out whether there is any contract to the contrary. Unless the partnership deed is placed on record, it is difficult to accept the contention, whether there is any partnership contrary to Section 31 of the Act. At this stage, it is difficult to conclude that the consent of other partners under Section 31 of the Act, the first respondent cannot be inducted is without any substance and it is not a ground to reject the plaint exercising power under Rule 11 of Order VII of CPC at the threshold.

The trial court, upon hearing argument of both the counsel, concluded that certain disputed questions are required to be decided at the end of trial and at this stage the plaint cannot be rejected, exercising power under Rule 11 of Order VII of CPC is an extreme, it can be exercised only in exceptional circumstances and the court must exercise its power with care and caution since the

court put an end to the plaint by rejecting the plaint at the threshold by exercising power under Rule 11 of Order VII of CPC.

In the present case, the plaint disclosing cause of action. In **Novartis Consumer Health India Pvt. Ltd.**, the single judge of this Court held that when the plaint did not disclose cause of action against some of the defendants, the plaint can be rejected, but some times the plaintiff may not claim relief against proper party are liable to be impleaded.

However, in the present facts of the case, the liability of the partners depends upon the terms and conditions of the partnership deed and in the absence of any contract to the contrary, consent of the partners is required to admit any other person as partner to its firm. If the contract is otherwise, Section 31 of the Act has no application. Therefore, in view of these disputed questions, it is difficult to reject the plaint at this stage. However, it is left open to the petitioners to raise this contention during trial. Hence, I find no ground to reject the plaint at this stage and the order of the trial court does not suffer from any legal infirmity warranting interference of this Court by exercising power under Article 227 of the constitution and consequently the point is held against the petitioners and in favour of the first respondent.

In the result, the civil revision petition is dismissed at the stage of admission. No costs.

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

M.SATYANARAYANA MURTHY, J

Date:07.03.2018
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