The Hon'ble Sri Justice V.RAMASUBRAMANIAN

CIVIL REVISION PETITION No.6522 OF 2017

Date:25.01.2018

Between:

Ramisetty Satyanarayana Murthy, S/o.Maraiah,
Aged about 67 years, Occ: Gold Business,
R/o.D.No.4/214, Rajupeta, Machilipatnam,
Krishna District.

...Petitioner

Vs.

Vyapaka Vishwanadhan S/o.Late Govind Rao,
Aged about 65 years, Occ: Business, R/o.D.No.22/362,
Englishpalem, Machilipatnam, Krishna District.

... Respondent

Counsel for Petitioner : Sri O. Manohar Reddy

Counsel for Respondent : Sri Narasimha Rao Gudiseva

Gist :

Head Note :

Cases Referred : Nil

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No.6522 OF 2017

ORDER:

Aggrieved by the dismissal of his application for rejection of plaint under order VII Rule 11 CPC, the sole defendant in a suit for recovery of money has come up with the above revision petition.

2. Heard Mr.O. Manohar Reddy, learned counsel for the petitioner and Mr.Narasimha Rao Gudiseva, learned counsel for the respondent.

3. The respondent filed a suit in O.S No.11 of 2014 on the file of the Principal District Court, Machilipatnam, for recovery of a sum of Rs.17,29,230/-. The suit was based upon eight promissory notes. In four out of eight promissory notes, the petitioner/defendant is described as Sri Lakshmi Jewellery Mart, Managing Partner Ramisetty Satyanarayana Murthy Garu." In the remaining four out of eight promissory notes, the executant is described as "Sri Lakshmi Jewellery Mart, Bandar, represented by Managing Partner Sri Ramisetty Satyanarayana Murthy Garu." The word "on behalf of" is used in four out of eight promissory notes.

4. Therefore, the petitioner/defendant filed an application under Order-VII Rule 11 CPC on the ground of lack of jurisdiction. The contention of the petitioner was that the borrowings allegedly made by the petitioner and the borrowings allegedly made by the partnership firm of which the petitioner is the Managing Partner could not have been combined together to institute one single suit and that if two different suits had to be instituted, one against the individual and another against the partnership firm, the claim would come within the pecuniary jurisdiction of the Senior Civil Judge's Court. Therefore, the petition under Order VII Rule 11 CPC was taken out on the ground of lack of jurisdiction. The trial Court dismissed the application on the ground

that there was dispute as to whether the promissory note was executed in the individual capacity of the petitioner or for and on behalf of the firm, and that therefore, before the trial, it was not possible to come to any opinion as to whether four out of eight promissory notes were executed by the firm. The trial Court also held that the question as to why the executant was shown in four promissory notes as the partnership firm, is a matter for trial since those four promissory notes do not bear the rubber stamps of the firm. In that view of the matter, the trial Court dismissed the application under Order VII Rule11 CPC, forcing the defendant to come up with the above revision.

5. Though the petitioner has actually brought his contention within the framework of lack of jurisdiction, the application of the petitioner is not really founded on the question of lack of jurisdiction but one of mis-joinder of the causes of action. The core defence of the petitioner is that only four out of eight promissory notes were allegedly executed by him in his individual capacity and the other four were allegedly executed for and on behalf of the partnership firm and that therefore, a single suit combining the claim as against the individual and the claim as against the partnership firm was not maintainable. The issue of joinder of causes of action is actually covered by Order II Rule 3 CPC. But mis-joinder of causes of action cannot be a ground for rejection of plaint under order VII Rule 11 CPC. Therefore, the petitioner has very cleverly attempted to bring the case within the issue of lack of pecuniary jurisdiction. But, there is a peculiarity about pecuniary jurisdiction. A Court which has a larger pecuniary jurisdiction can always pass a decree for a lesser amount while a Court which has pecuniary jurisdiction only up to a particular limit cannot pass a decree or even entertain a suit for a value that crosses its pecuniary jurisdiction.

6. In this case, the question as to whether the petitioner actually executed the promissory note, whether he executed the promissory note in his individual capacity on four occasions and in his capacity as Managing Partner of the firm on four other occasions, whether the borrowing was for and on behalf of the firm and for the benefit of the firm, are all questions of fact that have to be thrashed out only at the time of trial. At the time of trial, in case the Court comes to the conclusion that the borrowing was by the partnership firm for the benefit of the partnership firm, it may always be open to the Court to pass a decree, whichever way. Therefore, the Court below was right in concluding that the question of rejecting the plaint does not arise. I find no error of jurisdiction in the conclusion reached by the Court below.

7. Therefore, the revision petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

January 25, 2018
KTL