

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 29 of 2019**

1. K. Jivnathan Nair S/o Late G. K. Nair Aged About 41 Years R/o Laxmi Para Jamul, Tahsil And District- Durg, Chhattisgarh.
2. Yogendra Singh S/o Shri Jagdamba Singh Aged About 52 Years R/o Asha Ram, Bapu Nagar ACC Jamul Ward No.4, Tahsil And District- Durg, Chhattisgarh.....(Defendants)

---- Applicants**Versus**

- Suresh Kejriwal S/o Basant Lal Kejriwal Aged About 58 Years R/o 32/8, Nehru Nagar (West), Bhilai, Tahsil And District- Durg, Chhattisgarh.....(Plaintiff)

---- Non-applicant

For Applicants:

Shri Uttam Pandey, Advocate.

For Non-applicant:

None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****10.07.2019**

1. This Revision Petition has been preferred by Defendants under Section 115 of the Code of Civil Procedure, 1908 ((hereinafter referred to as the 'CPC') questioning the propriety of the order dated 29.01.2019 passed by the Third Additional District Judge, Durg in Civil Suit No. 4A/2018, whereby the application filed by the Defendants under Order 7 Rule 11 of CPC has been rejected.

2. Shri Pandey, learned counsel for the Applicants submits that the order impugned as passed by the Court below rejecting the application filed under Order 7 Rule 11 of CPC is apparently contrary to law. According to him, the suit has been instituted without disclosing the cause of action, therefore, liable to be rejected, however, without considering the said fact in its proper manner, the Court below has committed an illegality in

rejecting the said application.

3. I have heard learned Counsel for the Applicants and perused the entire relevant papers annexed with this petition carefully.

4. A suit was instituted by the Plaintiff/Respondent Suresh Kejriwal claiming specific performance of contract based upon an agreement to sale dated 12.03.2015. It is alleged by the Plaintiff that despite receiving the entire sale consideration of Rs. 74,00,000/- (Rupees Seventy-Four Lakhs only), the Defendants have failed to execute the registered deed of sale in his favour in pursuance to the terms and condition stipulated in the said agreement. It is pleaded further in the plaint paragraph 9 that despite receiving the Plaintiff's notice dated 18.04.2017, the registered deed of sale has not been executed, therefore, the Plaintiff has been constrained to file the suit in the instant nature.

5. Upon receiving the summons of the suit, the Defendants have moved an application enumerated under Order 7 Rule 11 of CPC. It is contended therein that the Defendants have never agreed to alienate the property as mentioned in the said agreement in favour of the Plaintiff and stated further that the claim as made without disclosing the course of action is liable to be rejected.

6. In reply to the aforesaid application, it is stated by the Plaintiff that despite receiving the entire sale consideration, the Defendants have failed to execute the registered deed of sale in his favour, therefore, he has been constrained to file the suit for specific performance of contract.

7. From perusal of the plaint averments, it is evident that entire case of the Plaintiff/Respondent is based upon the alleged agreement to sale dated 12.03.2015. Perusal of the further averments would show that

despite receiving the entire sale consideration, the registered deed of sale in pursuance to the alleged agreement to sale has not been executed. The instant suit was, therefore, instituted by the Plaintiff while disclosing the cause of action at paragraph 9 of its plaint.

8. What is, therefore, reflected from the above facts that the Plaintiff has been constrained to file the suit in the instant nature when the Defendants have failed to execute the registered deed of sale in his favour based upon the terms and conditions stipulated in the alleged agreement to sale dated 12.03.2015. It is settled principles of law that while entertaining the application filed under Order 7 Rule 11 of CPC, the Court has to take a decision looking at the pleadings of the Plaintiff alone and not on the rebuttal made by the Defendants or any other materials produced by them.

9. At this juncture, the principles laid down in the matter of ***Kamala and others Vs. K. T. Eshwara SA and others*** reported in (2008) 12 SCC 661 are to be seen. In the said matter, the trial judge has allowed an application for rejection of the Plaint in a suit for partition of family properties and the same was affirmed by the High Court as well. An appeal against the order of the High Court was filed before the Supreme Court and after examining the scope, ambit and exercise of powers under Order 7 Rule 11 of CPC, it has been observed therein at paragraphs 21, 22 and 23 as under:-

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the

plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

10. Likewise in the matter of *Mayar (H.K.) Ltd. Vs. Vessel M.V. Fortune Express* reported in (2006) 3 SCC 100, it has been held by the Supreme Court at paragraph 12 as under:-

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause

of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

11. By applying the principles laid down in the above referred decisions to the case at hand and in view of the pleadings made in the plaint, it is difficult to hold that the Plaintiff while instituting the suit has not disclosed the cause of action or his claim is liable to be rejected under Order 7 Rule 11 (a) of CPC.

12. Accordingly, I do not find any substance in this Petition. The petition is liable to be and is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE