

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.09 OF 2018

Lingappa Bapu Gawade and Ors. ...Applicants
vs.
Jinnappa Annu Karyappa and Anr. ...Respondents

Mr. Vijay Killedar, for the Applicants
Mr. T.S. Ingale a/w. Mr. Wasim Samlewale, for Respondent Nos. 1A to 1F & 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 08, 2019

P.C.:

- . Heard Mr. Vijay Killedar, for the Applicants.
2. The challenge in this Revision Application is to the order dated 14th July, 2017 by which the trial Judge has rejected the Applicants' application (Exhibit 21) seeking rejection of the counter claim by invoking the provision under Order VII Rule 11 of Code of Civil Procedure.
3. Mr. Killedar submits that the rejection is only on the ground that the counter claim discloses no cause of action. He clarified that he is not pressing other two grounds i.e. the counter claim not being in proper format or that the counter claim being barred by the limitation because such ground may be kept open

before the determination along with other issues arises in the suit. He further submits that from the perusal of the counter claim, it is apparent that no cause of action is disclosed.

4. According to me, there is no infirmity in the impugned order. Merely because, the counter claim was not physically filed as a part of written statement i.e. no ground to reject the counter claim. The issue of limitation has already been kept open by the learned trial Judge by observing that the issue to that effect can always be framed.

5. On the issue of failure to disclose the cause of action, from the perusal of the counter claim, it is evident that cause of action in fact disclosed that there is difference between absence of cause of action and failure to disclose the cause of action. Only in the later case, Plaint can be rejected by resort to Order VII Rule 11 of CPC. Further the Applicants' application dated 16th June, 2007 on the basis of which rejection of counter claim was sought, then it is clear that the Applicants had not even raised the issue of failure to disclose the cause of action in the counter claim. Therefore, the Applicants cannot be heard to complaint that such issue was never considered by the learned trial Judge. The application dated 16th June, 2017 makes it clear that case of the Applicants was that

there was no reason for the counter claim to have any cause of action to institute the counter claim. Even the body of the application, mere alleges that the cause of action discloses is vague. All this is not sufficient to reject the Plaint or counter claim on the ground of failure to disclose the cause of action.

6. There is no jurisdictional error in the impugned order. Consequently this Civil Revision Application is required to be dismissed and is hereby dismissed.

7. However, it is made clear that the observations made in the impugned order or for that matter the present order are only in the context of deciding as to whether the application under Order VII Rule 11 of CPC should have been allowed or not. Therefore, these observations should not influence the learned trial Judge whilst deciding the suit and counter claim in accordance with law.

8. The learned trial Judge is required to frame the issues of limitation and decide the same on its own merits in accordance with law.

9. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)