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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO.229 OF 2017

|                             |               |
|-----------------------------|---------------|
| M/s. B.C.Buhariwala & Sons  | ..Applicant.  |
| V/s.                        |               |
| Hindusthan Uniliver Limited | ..Respondent. |

Mr.Prerak Sharma with Chinmay Gaonkar I/b. Gaonkar & Co. for the applicant.

Ms.Aditi Phatak I/b. Udwadia & Co. for the respondent.

***CORAM : M.S.SONAK, J.***

**DATE : APRIL 10, 2019**

**P.C.:-**

Heard Mr.Sharma, learned counsel for the applicant and Ms.Phatak, learned counsel for the respondent.

2. Challenge in the petition is to the order dated February 17, 2017 by which learned trial Judge has rejected the applicant's application for rejection of the plaint by resorting to the provisions of Order 7 Rule 11 of the Code of Civil Procedure ('the CPC' for short).

3. Mr.Sharma, learned counsel for the applicant submits that the entire suit proceeds on the basis that the plaintiff is a lessee

of the Bombay Port Trust and in that capacity, he is entitled to seek a eviction of the applicant. Mr.Sharma points out that even prior to the institution of the suit, the Bombay Port Trust had secured a eviction decree against the plaintiff. He submits that if the plaint does not disclose the cause of action and in any case, the suit is barred by law. He, therefore, submits that by resort to the provisions of Order 7 Rule 11(a) of the CPC is required to be rejected.

4. Ms.Phatak, learned counsel for the respondent defends the impugned order on the reasoning reflected therein. She points out that at the stage of considering an application the provisions of Order 7 Rule 11 of the CPC, the defence of the defendant cannot be taken into consideration.

5. Order 7 Rule 11(a) of the CPC provides that a plaint may be rejected when it does not disclose a cause of action. From the perusal of the plaint, it is quite clear that the cause of action has been disclosed in the plaint. The issue as to whether the pleadings are true or correct, is not a matter which can be gone into at this stage. The issue as to whether on the basis of the cause of action, any relief is due to the plaintiff or not, is also not an issue which is required to be gone into at this stage, as long as the cause of action is disclosed in the plaint, as it is. In the present case, there is no question of

rejecting the plaint by resort to the provisions of Order 7 Rule 11(a) of the CPC.

6. Similarly, the provisions of Order 7 Rule 11(d) of the CPC states that a plaint can be rejected if the suit is barred or a statement made in the suit is barred under any law. Learned counsel for the petitioner has not been able to point out any statement in the plaint on the basis of which it can be said that the suit is bad in law.

7. The contention that there was also an eviction decree against the plaintiff is a contention which will arise in the course of the defence of the defendants. At the stage of deciding an application the provisions of Order 7 Rule 11(d) of the CPC, it is not permissible to look into the written statement of the defendants or to advert to the defence of the defendant. Only, if on the basis of a statement in the plaint, as it stands, a suit can be said to be barred under the law, the plaint can be rejected.

8. Since no such case is made out, there is no good ground to interfere with the impugned order. The civil revision application is dismissed. There shall be no order as to costs.

9. It is made clear that the observations made in the impugned order or for that matter in the present order are only made while in the context of deciding an application under the provisions

of Order 7 Rule 11 of the CPC. The learned trial Judge should not be influenced by the same while deciding the suit on its own merits and in accordance with law, where indeed it will be open to the application to raise all permissible defence, including the grounds now raised in this revision application. If such defence / grounds are raised, the learned trial Judge will have to decide the same on its own merits and in accordance with law. In this regard, all contentions are equally kept open.

***(M.S.SONAK, J.)***