

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 562 OF 2017

Palus Sahakari Bank Ltd. and anr. .. Applicants
vs.
Uday J. Kulkarni and ors. .. Respondents

Mr.V.B. Rajure for the Applicants.
Mr. R. A. Naik a/w. Ms Rati Sinhasane I/b Mr. U.R.
Mankapure for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 29 MARCH 2019.

P.C. :-

1] Heard Mr. Rajure for the applicants and Mr. R.A. Naik
for the respondents.

2] The challenge in this civil revision application is to the
order dated 17th October 2016 by which the learned Trial
Judge dismissed the applicants' application under Order 7
Rule 11 of CPC. In this application, the applicants, who are
the defendants in the plaint, had alleged that there was
failure to disclose the cause of action.

3] If the plaint is perused, it certainly, cannot be said that
there is failure to disclose cause of action. Mr. Rajure,
however, submits that since particulars have not been

furnished the same amounts to failure to disclose cause of action. This statement is obviously not correct. There is distinction between there being no cause of action and failure to disclose cause of action. The plaint can be rejected only in the later category of the case and not the former.

4] The application made by the applicants invoking the provisions of Order 7 Rule 11 of CPC, in the facts and circumstances of the present case, was quite frivolous and was correctly rejected. If at all there is anything error in the impugned order, then that is non-award of costs against the applicants. That error can however, be corrected at this stage whilst dismissing this revision application.

5] Accordingly, Civil Revision Application is dismissed with costs of Rs.5000/- payable by the applicants within a period of four weeks from today to respondent No.1.

6] However, it is clarified that none of the observations in the impugned order or for that matter the present order need influence by the learned Trial Judge whilst deciding the suit

on merits. The observations are only in the context of examining whether any case was made out for rejection of the plaint.

7] At this stage, learned counsel for the applicants states that since the applicants are the Bank and it is dealing with public money, the order for costs may be deleted. The submission of learned counsel for the applicants is correct. Costs will have to be paid by Managing Director of the Bank personally and not through funds of the Bank. In case, the Managing Director is of the opinion that some other Officer is responsible for instructing to filing of such frivolous application before the Trial Court, the Managing Director may thereafter recover such costs from such Officer. However, to begin with, the costs will have to be paid by the Managing Director personally within four weeks from today. The Managing Director to file affidavit of compliance within four weeks from today in this Court.

(M. S. SONAK, J.)