

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO.903 OF 2019

IN

WRIT PETITION NO. 5521 OF 2019

(TEJRAM ROOPCHANDJI AMBILDUKE & ANR....VS.. TARACHAND GULABRAO SAWARKAR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.K.Maheshwari, Advocate for petitioners/petitioners.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 11, 2019.

Heard.

In the civil suit filed by the respondent seeking decree for recovery of amount, the petitioners had filed an application under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure contending that the plaint is liable to be rejected as, even according to the plaintiff, the transaction had taken place with Satguru Sai Civil Construction Pvt. Ltd. which is not impleaded as party and, the plaintiff cannot seek decree for recovery of the amount against the petitioners. According to the petitioners, there had not been any agreement between the petitioners and the respondent (plaintiff), and the agreement on which the plaintiff relies is interpolated and therefore, it is void agreement and the plaintiff cannot make claim on that basis. The learned trial Judge rejected the application filed by the petitioners under Order 7 Rule 11 of the Code of Civil Procedure and the writ petition filed by the petitioners is also dismissed. Now, the petitioners have filed this application seeking review of the order passed in the writ petition.

The learned Advocate for the applicants/petitioners relied on the judgment given by the Hon'ble Supreme Court in **Civil Appeal No. 6760 of 2019**, (arising out of Special Leave Petition (Civil) No.9233 of 2017) (*Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar vs.. Krishna Nandan Singh and another*) on 2nd September 2019 to support the argument that if the plaint does not disclose legal right in favour of the plaintiff and against the defendants, plaint can be rejected under Order 7 Rule 11 of the Code of Civil Procedure. The proposition laid down in the above referred judgment is well settled and in a given case the Court can pierce through the veil to see whether cause of action for filing the suit, in fact, exists or an illusion of cause of action is created by clever and artistic drafting of the plaint. However, in the present case, the above referred judgment does not support the petitioners inasmuch as the contention of the plaintiff cannot be accepted unless definite finding is recorded regarding the agreement on which the plaintiff is relying and such finding cannot be recorded unless the plaintiff is granted opportunity to adduce evidence and prove his case.

In the above facts, it cannot be said that there is any error apparent on the face of the record which necessitates exercise of review jurisdiction.

Hence, the civil application is **dismissed**. No costs.

JUDGE