

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM :

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3189 of 2019

and

C.M.P. No. 20774 of 2019

HIQ Electronics Private Limited,
Represented by its Director V. Sendyl,
Plot No. 9, Electrical and Electronics
Industrial Estate,
Hosur - 635 109.

... Petitioner

Vs.

P. Rajapandian,
Maxima Electronics,
Plot No. 8, Electrical and Electronics
Industrial Estate,
Hosur - 635 109.

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.07.2019 made in I.A. No. 1 of 2019 in O.S. No. 93 of 2018 passed by learned Additional District Judge, Hosur.

For Petitioner

: Mrs. Vasundhara Arun

For Respondent

: Mr. T. R. Sundaram

ORDER

This Civil Revision Petition has been filed against the fair and decretal order made in I.A. No. 1 of 2019 in O.S. No. 93 of 2018 on the file of the learned Additional District Judge, Hosur, by order dated 18.07.2019

2. Before the trial Court, the respondent herein filed a suit in O.S. No. 93 of 2018, where the revision petitioner was arrayed as third defendant. Apart from the third defendant, first defendant is Tamil Nadu Industrial Investment Corporation Limited, represented by its General Manager and the second defendant was the Branch Manager, Tamil Nadu Industrial Investment Corporation Limited, Salem.

3. Inter alia, the plaintiff seeks for the relief of recovery of money and recovery of possession of small pieces of land. It seems that, the plaintiff was the allottee of the industrial land and for which, the first and second defendants financed, thereafter it seems that the amount has not been repaid to the first and second defendants,

therefore, they took action against the plaintiff, with a result, the entire property was auctioned and the third defendant being the successful bidder had also paid the entire auction amount. In this regard, the Writ Petition and Intra Court Appeal has been filed by the plaintiff and in both cases the plaintiff lost.

4. Only in that circumstances for the reasons stated in the cause of action in paragraph No. 5 of the plaint, the present suit has been filed by the plaintiff for recovery of some money and the prayer Nos. A to C in the plaint, speak about recovery of money from the defendants especially from the first and second defendants, prayer No.4 seeks for recovery of some portion about 450 sq.ft., on the ground that, out of the total area 10900 sq.ft., of the land, only 10450 sq.ft., was auction purchased by the third defendant and the remaining 450 sq.ft., was not purchased.

5. For all these reasons, the suit was laid, where the third defendant has chosen to file this application invoking Order 7 Rule 11 (a) & (d) of Civil Procedure Code to reject the plaint.

6. It is to be noted that, first and second defendants have not chosen to file any petition to reject the plaint.

7. The said application in I.A. No. 1 of 2019 filed by the revision petitioner / third defendant was rejected, by the impugned order dated 18.07.2019 by the trial Court, as against which, the present revision has been filed.

8. I have heard the learned counsel appearing for the petitioner who would submit that, in so far as the issue raised in the plaint especially the fourth prayer sought for therein had already been adjudicated and decided. When that being so, there is no question of rehearing or re-adjudicating the very same issue and she would further submit that, there is no absolute cause of action for filing the said suit as well as what are all the cause of auction on these grounds, have already been decided in appropriate proceedings, hence third defendant / revision petitioner filed the said application seeking for rejection of the plaint.

9. Learned counsel would further submit that, in so far as, the prayer No. 4 i.e., prayer No. (d) is concerned, the entire property of 10900 sq.ft., had been purchased by the third defendant and in this context, he made a clarificatory argument by stating that, in the sale deed, in one place, it is mentioned as 10900 sq.ft., and in another which is a typographical error, where it is mentioned wrongly as 10450 sq.ft.,.

10. Moreover, it has been specifically stated as 0.25 acres, which is equivalent to 10900 sq.ft. The entire property of 10,900 sq.ft., was purchased by way of auction by the third defendant, therefore the question of recovery of 450 sq.ft., allegedly not been purchased by the third defendant as alleged by the plaintiff, does not arise. Prayer No. (d) seeking recovery of such land of 450 sq.ft., would not arise at all. It was specifically raised before the trial Court, wherein the learned Judge at paragraph No. 12 of the impugned order, though accepting the said position, however has rejected the plea of the revision petitioner.

11. Apart from that, the learned counsel appearing for the

revision petitioner would also make submissions stating that, in respect of Prayer Nos. (a) to (c), assuming that there had been some dispute over the payment of recovery of money etc., between the plaintiff and the first and second defendants, the suit should have been laid, if at all, only against first and second defendants, however in all these prayers, the plaintiff seeks for such relief of recovery of money not only from first and second defendants but also from the third defendant as the plaintiff wanted to fix the responsibility on third defendant along with first and second defendants jointly and severally, therefore it is necessitated to file such application invoking Order 7 Rule 11 of Civil Procedure Code to reject the plaint.

12. However, Mr. T. R. Sundaram, learned counsel appearing for the respondent / plaintiff who entered appearance through the Caveator made submissions stating that, no doubt the property in question had been purchased by way of auction by the third defendant, as against which, Writ Petition was filed, subsequently, Intra Court Appeal was filed, where the Court held in favour of auction purchaser. In so far as, the prayer sought in the plaint is concerned, it is based on

the due payable between the plaintiff as well as the first and second defendants, therefore based on the amount payable by the first and second defendants to the plaintiff or recoverable from them, the said suit has been laid with the prayers.

13. In so far as the plea raised by the revision petitioner i.e., third defendant that, if at all the suit should have been laid, it should be laid only against the first and second defendants but not against the third defendant as the prayer sought for against the third defendant cannot be countenanced, he submits that the dispute has been settled already in an appropriate proceedings, where the auction purchase made by the third defendant in their favour had already been confirmed. The learned counsel appearing for the respondent would rely upon a recent decision of the Hon'ble Supreme Court in ***Madhav Prasad Aggarwal and another vs. Axis Bank Limited and another in SLP (C) No. 31579 of 2018*** by judgment dated 01.07.2019 and would submit that, if at all the plaint has to be struck off by invoking under Order 7 Rule 11 (d) of Civil Procedure Code, that should be done in toto i.e., against all the defendants. Therefore, the said invocation under Order 7 Rule 11 (d) of

Civil Procedure Code cannot be made selectively for one or more defendants leaving some more defendants. In this context, the law laid down by the Hon'ble Supreme Court in the said judgment at Paragraph Nos. 11, 12 and 13 has been heavily relied upon by the learned counsel, which are extracted here under:-

*"11. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of **Sejal Glass Limited** (supra) is directly on the point. In that case, an application was filed by the defendants(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The Civil Court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant*

No.1 company alone. The question considered by this Court was whether such a course is open to the Civil Court in exercise of powers under Order 7 Rule 11 (d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11 (d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.

12. In view of this settled legal position we may now turn to the nature of reliefs claimed by respondent No. 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant/respondent No.1 herein. No more and no less.

13. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11 (d) of CPC on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time

of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against respondent No. 1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly."

14. He would further submit that, in so far as the prayer sought for against the defendants are concerned, it is the stand of the plaintiff that, the amount payable by them is recoverable amount by the plaintiff mainly from first and second defendants, since the third defendant being the auction purchaser is enjoying the property, the third defendant also severally and jointly liable to pay the amount with

the prayer sought for.

15. That apart, the learned counsel would further submit that, the plaint cannot be rejected at the threshold on the instance of the third defendant who also chosen to file an application, where the first and second defendants have not been shown as parties and what is the stand of the first and second defendants is not known so far.

16. He would further submit that, assuming for the arguments sake that the prayer sought for in the plaint was mainly against the first and second defendants, even the fourth prayer sought for against the third defendant is concerned, the issue has been settled already, that would not *ipso facto* makes the third defendant entitled to seek for rejection of the plaint against the third defendant. Such a peace-meal rejection against the selective defendants under Order 7 Rule 11 (d) of Civil Procedure Code is impermissible as per the settled law which has been reiterated and amplified in the recent decision of the Hon'ble Supreme Court referred to above. The learned counsel for the Caveator / Respondent also submitted that, having considered all these aspects, the learned trial Court Judge has rejected the said application in the impugned order, hence it does not require any interference from this

Court.

17. I have considered the said submissions made by both sides and perused the materials placed before this Court.

18. As has been rightly pointed out by the learned counsel appearing for the respondent, the law is well settled in this regard in so far as invocation of Order 7 Rule 11 (d) of Civil Procedure Code is concerned.

19. Moreover, if at all there are some reasons to strike off the plaint against one or more defendants leaving other defendants in the suit, the trial Court cannot strike off the plaint against the selective defendants, as the suit if at all to be dismissed by striking off the plaint, which has to be done against all the defendants and not against one or more defendants leaving others.

20. This legal position is very clear and unambiguous and which has been amplified in the recent decision in ***Madhav Prasad Aggarwal*** case referred to above, where the learned Judge has held in

an unequivocal term that, the plaint has to be rejected as a whole in exercise of power under Order 7 Rule 11 (d) of Civil Procedure Code. If that principle is applied in the present facts of the case, what has been done by the trial Court in rejecting the application of the petitioner can very well be justified.

21. If at all, the revision petitioner has got any grievance, on the prayers sought for in the plaint, in the given facts and circumstances, it is open to the third defendant to adjudicate the issue before the trial Court during the trial and if ultimately, the trial Court finds that the prayer sought for by the plaintiff against the third defendant cannot be considered and granted, certainly whatever relief now expecting by the third defendant would be given by the trial Court, however that circumstance does not arise at this juncture, therefore, at the threshold plaint cannot be rejected i.e., selectively against the third defendant.

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22. Therefore for all these reasons, this Court feels that, the rejection made by the learned Judge, dismissing the revision petition,

by refusing to invoke Order 7 Rule 11 of Civil Procedure Code, is fully justifiable and sustainable, hence it does not require any interference from this Court.

23. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

26.09.2019

Index: Yes / No
Speaking order / Non speaking order

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To

The learned Additional District Judge,
Hosur.



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R.SURESH KUMAR, J.

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