

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.508 and 524 of 2019

COMMON ORDER:

These two Revisions arise between the same parties out of the same suit and therefore they are being disposed of by this common order.

2. Petitioner in both these Revisions is sole defendant in O.S.No.907 of 2016 on the file of the IV Senior Civil Judge, City Civil Court, Hyderabad.

3. The said suit was filed by respondent in the Revisions against the petitioner seeking eviction of petitioner from the suit schedule property and for recovery of arrears of rent of Rs.5,50,000/- from 15-10-2015 to 15-08-2016 and to direct the petitioner to pay damages at Rs.1,50,000/- from the date of suit.

4. Without filing a written statement in the suit, the petitioner filed I.A.No.155 of 2015 under Order VII Rule 11 C.P.C. to reject the plaint and I.A.No.156 of 2018 under Order II Rule II C.P.C. to declare that the respondent had relinquished his claim to sue the petitioner by omitting to sue the petitioner in respect of the same cause of action and he is therefore not permitted to sue for reliefs so omitted.

Plea of petitioner in I.A.No.155 of 2015 and I.A.No.156 of 2015

5. In the affidavits filed in support of the said applications, it is the contention of the petitioner that respondent had filed a suit O.S.No.1035 of 2015 for recovery of money against petitioner to direct the petitioner to pay arrears of Rs.5,50,000/- from 15-12-2014 to 15-10-2015 at Rs.55,000/- p.m. along with interest @ 24% p.a. on the suit amount; that petitioner had filed O.S.No.550 of 2016 before the Senior Civil Judge, City Civil Court at Hyderabad against the respondent seeking a permanent injunction restraining the respondent and its employees etc. from interfering or entering into the suit schedule property except by due process of law and also seeking police protection to the petitioner and ensure peaceful possession and enjoyment of the suit property of the leased premises; on 31-05-2016 in I.A.No.236 of 2016 in O.S.No.122 of 2016 (later numbered as O.S.No.550 of 2016), petitioner was granted interim injunction until further orders; a Tr.O.P.No.1968 of 2016 was filed by the petitioner before the Chief Judge, City Civil Court, Hyderabad seeking transfer of O.S.No.1035 of 2015 and O.S.No.550 of 2016 and both suits were transferred from the Court of the II Senior Civil Judge, City Civil Court, Hyderabad to the Court of IV Senior Civil Judge, City Civil Court, Hyderabad by order dt.16-12-2016; that in the evidence affidavit filed by respondent (P.W.1 in O.S.No.1035 of 2015) served on petitioner on 08-03-2017, respondent revealed about the instant suit O.S.No.907 of 2016.

6. It is contended that petitioner was shocked to see that respondent had filed multiple suits ostensibly on the same cause of action against the petitioner by intentionally misrepresenting the facts and suppressing the material facts and did not come up with clean hands.

7. It is contended that respondent did not disclose any cause of action and O.S.No.907 of 2016 is barred by law and respondent cannot initiate and maintain the said suit.

8. It is contended that there was a false averment made in para-11 in O.S.No.907 of 2016 that respondent did not file any other suit for the same relief against petitioner; and respondent did not fulfill the mandatory provisions under the Transfer of Property Act, 1882.

9. It is also contended that respondent, at the time of filing the plaint as well as issuing notice/summons, purposefully sent them to an address where the petitioner was unavailable and he did not file the plaint in duplicate.

10. It was contended that respondent had filed Cr.No.270 of 2016 against petitioner, but the same was not mentioned in the pleadings in O.S.No.1035 of 2015 and O.S.No.550 of 2016 by the counsel representing the respondent; that there is fraud being played upon the Court by respondent and therefore the plaint is required to be rejected on the ground that it does not disclose any cause of action and the suit appears from the statement in the plaint to be barred by law.

11. It was also contended that the Court should declare that respondent had relinquished his claim to sue the petitioner by omitting to sue the petitioner in respect of the same cause of action and the respondent cannot afterwards sue for any relief so omitted.

Counter affidavits of respondent

12. Counter-affidavits were filed by respondent opposing both the applications pointing out that both the applications were filed only with an intention to drag on the proceedings and to avoid payment of rents. It was contended that the petitioner was *set ex parte* and later filed an application to set aside the *ex parte* order, which was allowed on condition that petitioner should file a written statement also to pay costs on or before 28-03-2018; and in order to prolong the matter, petitioner had filed these applications, which are not maintainable.

13. It is contended that in O.S.No.1035 of 2015, respondent had only sought recovery of rents from 15-12-2014 to 15-10-2015 for 10 months only; later respondent had issued a legal notice on 10-03-2016 terminating the lease of petitioner in respect of the suit property, for which petitioner did not give any reply though petitioner received it; and so O.S.No.907 of 2016 was filed for ejectment of petitioner, *mesne* profits and arrears of rent from 15-10-2015 to 15-08-2016.

14. It is contended that the relief sought in the two suits are different and the allegation that the respondent filed multiple suits on the same cause of action by misrepresenting material facts is false and baseless.

15. It was also denied that respondent did not disclose cause of action in the plaint. It was pointed out that cause of action was mentioned in para-7 of the plaint.

16. The allegation that respondent had purposefully issued summons and notices to an address where the petitioner is unavailable was denied and it was asserted that summons and notices were sent to the proper and correct address

17. . It was contended that the plea of petitioner as to maintainability of the suit does not fit into any one of the clauses of Rule 11 of Order VII C.P.C. and there are no grounds to reject the plaint.

18. It is also contended that the provisions of Order II Rule II C.P.C. are not applicable to the instant case and the cause of action in O.S.Nos.1035 of 2015 and 907 of 2016 are different and the relief sought in both the suits are different.

The orders of the Court below

19. By separate orders dt.04-01-2019, the Court below dismissed both the applications. It held that rejection of plaint under Order VII Rule 11 C.P.C. being a drastic power to terminate a civil action at the threshold, the conditions precedent to exercise the power are stringent; the plea of petitioner that respondent had filed multiple suits for the same cause of action and relief misrepresenting the facts and suppressing the material facts etc., is not a ground for rejection of the

plaint; the plea of petitioner that there is no cause of action for filing the suit and simultaneously contending that the cause in the instant suit is same as the cause of action in the earlier suits shows that there is a cause of action; and the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, plaint cannot be rejected.

20. It held that whether the plaint discloses a cause of action, is a question on fact which has to be gathered on the basis of averments made in the plaint in its entirety taking those averments to be correct and on perusal of the plaint, it cannot be said that there is no cause of action as pleaded by petitioner.

21. It also held that except raising a plea that plaint is barred by law it is not shown by petitioner as to how it is barred by law. It observed that at the stage of exercising power under VII Rule 11 C.P.C., the stand of the defendant in the written statement or in the application for rejection of the plaint is wholly immaterial and on reading of the plaint as a whole and proceeding on the basis that they are correct, it cannot be said that suit is barred by law.

22. Assailing the same, these Revisions are filed.

Contentions of Counsel for petitioner

23. Learned counsel for petitioner contended that both the orders are contrary to law and cannot be sustained. According to him, petitioner

is being harassed by respondent by filing multiple suits without any cause of action; and by playing fraud on the Court, the respondent wants some how or other get the petitioner to vacate the suit schedule property. According to him, the Court below did not apply its judicial mind to the facts and circumstances of the case and its orders suffer from violation of principles of natural justice, due process of law and it misdirected itself into scope of enquiry. According to him, the continuation of O.S.No.907 of 2016 is a procedural illegality and irregularity and the orders passed by the Court below are arbitrary, illegal, perverse and untenable. According to him, the impugned orders are *per incuriam* and the decisions of the Supreme Court and this Court were ignored by the Court below.

24. He relied upon the decisions in **Nalla Raji Reddy Vs. Venkatanatah Chary¹, R.K.Roja Vs. U.S.Rayudu and another², S.Lakshmi and others Vs. Reliance Buildings and others³, P.Pushpamala Reddy Vs. Janga Raghava Reddy⁴, G.Venkata Swamy and others Vs. State of A.P. rep. by Collector and District Magistrate and another⁵, Sheela Bai Vs. The State of A.P. and another⁶, The Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman Vs. M/s.Ponniamman**

¹ 2016(1) ALD 333

² AIR 2016 SC 3282

³ 2015(6) ALT 265

⁴ 2015(4) ALT 447

⁵ 2014(6) ALT 713

⁶ 2014(4) ALT 22

**Educational Trust, rep. by its Chairperson/Managing Trustee⁷,
Saleem Bhai and others Vs. State of Maharashtra and others⁸,
Mohan Singh Vs. Amar Singh⁹, T.Bhopal Reddy Vs. K.R.Lakshmi
Rai¹⁰ and T.Arivandaandam Vs. T.V.Satyapal and another¹¹.**

Consideration by the Court

25. I have noted the contentions of the learned counsel for petitioner.

26. From the material on record it is clear that petitioner is the tenant of the respondent and on the ground that petitioner did not pay rents for the period from 15-12-2014 to 15-10-2015, respondent filed O.S.No.1035 of 2015 which is pending before the Court of II Senior Civil Judge, City Civil Court, Hyderabad.

27. Subsequently, respondent issued a legal notice dt.10-03-2016 terminating the lease and then filed O.S.No.907 of 2016 seeking eviction of the petitioner, arrears of rent from 15-10-2015 to 15-08-2016, damages etc.

28. *Prima facie* looking at the pleadings in these suits it is apparent that when O.S.No.1035 of 2015 was filed the respondent not having terminated the tenancy, he had no cause of action to seek eviction of the petitioner. The said cause of action to seek ejectment accrued to respondent only after tenancy was terminated through legal notice

⁷ (2012) 8 SCC 706

⁸ (2003) 1 SCC 557

⁹ (1998) 6 SCC 686

¹⁰ 1998(1) ALT 292

¹¹ (1977) 4 SCC 467

dt.10-03-2016 and so he then filed O.S.No.907 of 2016 for eviction of petitioner and for rents for the period 15-10-2015 to 15-08-2016. There is no over lap of the claim of arrears of rent and the periods of claim are distinct and separate.

29. When the respondent did not have a cause of action to sue for eviction when he filed O.S.No.1035 of 2015, it is not open to the petitioner to contend that in the said suit, the respondent should have also sought for relief of eviction. Therefore Order II Rule 2 C.P.C. is not attracted and there is no merit in the contention of the petitioner that respondent had relinquished his claim to sue the petitioner for eviction by omitting to sue the petitioner in respect of the cause of action for eviction.

30. Coming to the other contention regarding rejection of plaint under Order VII Rule 11 C.P.C., it is settled law that while deciding an application under the said provision, what needs to be looked into are only the averments in the plaint and the documents filed along with the plaint; and the pleas taken by defendant in the written statement would be only irrelevant at that stage [**Saleem Bhai** (2 supra)].

31. The plea of misrepresentation of facts or suppression of facts or violation of provisions of Transfer of Property Act, 1882 or not giving correct address of the petitioner for service of notice/summons etc. or filing of criminal complaint in Cr.No.270/2016 or plea of fraud raised

by petitioner, are all defences of the petitioner. These have to be pleaded in the written statement filed by petitioner and the said facts cannot be taken into account to reject the plaint in view of the above decision.

32. The Court below had considered the averments in the plaint and had come to the conclusion that there is a cause of action to file the suit and in the light of the said finding, which does not warrant any interference by this Court, it cannot be held that the allegations made by respondents are vexatious or merit less or do not disclose a clear right to sue. The Court below had rightly held that rejection of plaint under Order VII Rule 11 C.P.C. is a drastic power and unless the conditions precedent are fulfilled, plaint cannot be rejected; and in the instant case, the petitioner has miserably failed to show that the plaint in the instant case is liable to be rejected on any one or other grounds in the said provision.

33. In my considered opinion, both the applications filed by petitioner are in fact vexatious and filed solely with an intention to delay the disposal of the suit and have not been file *bona fide*.

34. Accordingly, these two Revisions are dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand only) to be paid by petitioner to respondent within four (04) weeks from the date of receipt of copy of the order.

35. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-04-2019

Vsv

