

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. No.767 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.21.01.2019 in I.A. No.868 of 2016 in O.S. No.76 of 2016 of the V Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners are defendants in the said suit.
3. The respondents/plaintiffs filed the said suit alleging that the 1st respondent is a Society registered under the Societies Registration Act, 1860 in the State of Uttar Pradesh and that it was being represented by its elected Joint Secretary through a resolution passed by the members of the managing body and the joint body of the Society, which is filed along with the plaint.
4. The following reliefs were sought in the plaint:
 - “a) A decree for permanently restraining the Defendants not to interfere in the administration and affairs and cause hindrances in the functioning of the Plaintiffs society;
 - b) A decree for declaration that the Trade Mark certificate issued on the application moved by the Defendant society is in the name of the society is invalid;

c) Award costs of the suit;

d) Such other relief or relief(s) as this Hon'ble Court may fit and proper in the circumstances of the case."

5. In the para (iv) of the plaint dealing with the cause of action it is alleged cause of action arose on the following dates.

- a) For the suit initially arose on 01.10.2014 the Defendant had unauthorisedly by using the name of the society had depicted falsely Shri P.Rajagoplachari as the President of the society although the issue of the dispute of management of the society was yet to be adjudicated by the Hon'ble High Court of Judicature at Allahabad by means of Writ Petition No.5034/2010 and other connected Writ Petition No.24212/2011, 486669/2013, 30767/2014, 40035/2004, 41631/2012, 41632/2011 and had filed a false Complaint before the authorities.
- b) It further arose on 03.10.2014 when inspite of having knowledge that the question that issue of management of the society Shri Ram Chandra Mission, Shahjahanpur was pending and they by falsely depicting as Managing Body of the society and falsely projecting the Plaintiffs as different society has caused hindrance and interference in the working and affairs of the society registered under the provisions of the Societies Registration Act, 1860 applicable at the State of Uttar Pradesh.
- c) It further arose when the Complaint was lodged on 26.09.2014 being a second Complaint before the CCS, DD, Hyderabad on false and frivolous Complaint and there the Defendants had tried to seek advantage of the Trade Mark Certificate which is in the name of the society and not any individual persons and has sought

infringement of the said Trace Mark, although admittedly they had raised objection before the IPAB, Chennai regarding who would represent the society in the ORA'S No.283 to 292 filed by Society headed by its President Shri Navneet Kumar Saxena and represented by its Elected Working Committee Member Shri Puneet Kumar and stop to administer the affairs of the society.

d) It further arose when the Defendant had falsely projected themselves as the society and had tried to seek advantage of the cancellation of PAN AAETS5043H concealing the facts before the authorities that the issue is pending in Writ Petition No.7742/2014 before the Hon'ble High Court New Delhi. Further the Defendant has been continuing to represent the said fact and have further concealed the facts before the authorities that on 10.04.2015 an order was passed in Writ Petition No.1895/2006 In re: Shri Ram Chandra Mission Through its Elected President Shri Navneet Kumar Saxena and Another Vs Commissioner of Income Tax, Bareilly and Others wherein it was specifically held that the Petitioners are the society holding 12A certificate and the 80G certificate cancelled must be renewed. It is pertinent to mention that Section 12A pertain to the registration of any Institution/Body/Organisation and when it has been held that the 12A certificate belongs to the Petitioner society then it is clear that the Plaintiff are the original society and not the defendant as they have been projecting falsely within the territorial region of this Hon'ble Court.

e) That the cause of action again arose when the Defendant by manufacturing the Constitution of the society have false and illegally projected the same as the registered one before the authorities and have misled the authorities within the territorial region of the

Hyderabad, State of Telangana. Thus the suit filed is within time and not barred by time.

6. Written statement was filed by the petitioners opposing the suit claim.

7. Before filing of written statement, petitioners filed I.A. No.868 of 2016 invoking Order VII Rule 11 CPC stating that the suit has been instituted by persons, who are unauthorized to file it or to represent the 1st respondent and is an abuse of process of law. It is contended that only the petitioners/defendants are entitled to manage the entire affairs of the 1st respondent/1st plaintiff and the person, who claims to have been authorized to represent the 1st respondent has no authority to do so because according to the petitioners, the competent authority under the statute had recognized only the petitioners as members of the managing body of the 1st respondent/1st plaintiff. Reference is made to a criminal case filed by the 4th petitioner against respondents 1 and 2 and 22 others and also to a suit O.S. No.61 of 2011 and another suit O.S. No.360 of 2000. Reference is also made certain writ petitions filed by one Naveen Kumar Saxena, which are said to be pending, according to the respondents, in the High Court at Allahabad and it is stated that all those writ petitions were dismissed on 10.07.2015. It is contended that the suit was filed wrongly using the name of the 1st respondent vexatiously by suppressing the relevant facts and so the plaint should be rejected.

8. Counter affidavit was filed by the respondents opposing the said application.

9. It is contended that the petitioners had resorted to misrepresentation, suppression and concealment of facts. It is pointed out that the application under Order VII Rule 11 CPC cannot be maintained because the averments in the said application do not fall within the parameters of the said provision. It is contended that:

“a) The Complaint and the plaint alone have to be seen and the veracity and truthfulness of the facts of the case/pleadings cannot be tested or gone into while deciding the application under Order VII Rule 11 CPC.

b) That while deciding the application under Order VII Rule 11 CPC the material evidences cannot be looked into.

c) That while deciding the application under Order VII Rule 11 CPC the locus standi of the Complainant with disputed question of facts cannot be gone into and the remedy available is by conducting further proceedings in the suit.

d) That the defence of the opposite party/defendant cannot be looked into while deciding the application under Order VII Rule 11 CPC.

e) That the proofs in form of evidences/annexures can be seen only at the later stage i.e. evidence stage and cannot be looked into while deciding the application under Order VII Rule 11 CPC.

f) That the entire allegations made in the plaint has only to be considered while deciding the application under Order VII Rule.

g) That the pleas of the defendants which he could raise in his written statement cannot be entertained at the stage of deciding Order VII Rule 11 CPC.

h) That the issue involves considering the mixed question of law and fact which cannot be decided at the stage of deciding Order VII Rule 11 CPC.

8. That application filed by the defendant is outside the scope and purview and it nowhere states any objection as stated in consideration to the sub provisions mentioned from (a) to (d) of Order VII Rule 11 CPC.”

10. It is pointed out that issue regarding the *locus standi* of the respondents has to be decided as an issue later and cannot be gone into at this stage. It is contended that the proceedings before the Allahabad High Court had not attained finality and Special Leave No.676 of 2015 and batch challenging the orders in the writ petitions are pending before the Allahabad High Court. Several other contentions on merits also raised.

11. By order dt.21.01.2019, the Court below rejected the said application.

12. After referring the contentions of the parties and the decisions cited across the Bar it held that while exercising power under Order VII Rule 11 CPC in order to hold whether plaint is liable to be rejected or not, it shall only look into the plaint averments and nothing else. In view of this legal proposition, it held that it is impermissible to consider the stand of the defendants, and the pleas raised by the defendants will be considered only during the trial of the suit.

It observed that a reading of the plaint shows that there is a cause of action to maintain the suit and so the plaint cannot be rejected.

13. Assailing the same, this Revision is filed.

14. It is the contention of the counsel for the petitioners that though the plaint was signed on 02.07.2015 it was presented in the Court below after the order was passed deciding the writ petitions by the Allahabad High Court on 10.07.2015 and thus there is a material suppression of the factum of dismissal of the writ petitions by the Allahabad High Court in the plaint filed by the respondent.

15. It is his further contention that in the orders passed by the Allahabad High Court in the said writ petitions the petitioners were held to be proper and valid members of the managing committee of the 1st respondent Trust and the said decision binds the respondents and therefore, the plaint ought to be rejected because in such an event the persons representing the 1st respondent and the 2nd respondent would have no cause of action against the petitioners.

16. He also placed reliance on the decision of the Supreme Court in **Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.**¹

17. But the counsel for the petitioners did not dispute that the orders passed in the writ petitions by the learned Single Judge of Allahabad High Court have been challenged in Special Appeal

¹ (2004) 3 SCC 137

No.676 of 2015 and other connected Special Appeals and the matters are still pending adjudication there.

18. It is settled law that a plaint cannot be rejected on the ground of principle of *res judicata* which would involve a mixed question of law and fact and which may require not only examination of the plaint but also other evidence such as the order passed in the earlier proceedings. (**Kamala and others Vs. K.T.Eshwara Sa and Others²**). Also rejection of the plaint under Order VII Rule 11 is a drastic power conferred in the Court to terminate a civil action at the threshold and while considering exercise of power under Order VII Rule 11 in a given case, the averments in the plaint have to be read as a whole to find out whether it discloses a cause of action, or whether the suit is barred under any law, but at the stage of exercise of power under Order VII Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint, is wholly immaterial. It is only if the averments in the plaint *ex faice* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. (**P.V.Guru Raj Reddy Vs. P.Neeradha Reddy³**).

19. In the decision **SOPAN SUKHDEO SABLE** (1 supra) relied upon by the counsel for the petitioners, though the trial Court, first appellate Court and the High Court in Second Appeal had confirmed the rejection of plaint by the trial Court, the Supreme Court reversed

² (2008) 12 Supreme Court Cases 661

³ 2015 (3) LAT 14 (SC)

the same and held that matter required to go to trial. It reiterated that the averments in the plaint are the germane for deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code and the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. It observed that only if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, there is justification to exercise power under Order VII Rule 11 but not otherwise.

20. In my considered opinion, a reading of the plaint in the instant case does disclose a cause of action and the defense set up by the petitioners cannot be taken into account to reject the plaint. Also the decisions of the Allahabad High Court in the writ petitions have not yet attained finality even according to the petitioners. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

21. Accordingly, this Revision fails and is dismissed. There shall be no order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.06.2019
LSK