

15.12.2020
Sl. No.2
srm

C.O. No. 1550 of 2020

Kanak Kumar Chatterjee

Vs.

Swati Chatterjee

Mr. Sabyasachi Chatterjee,

Mr. Debabrata Mondal

...for the Petitioner.

This revisional application has been filed by the defendant in Title Suit No.145 of 2020 being aggrieved by the order dated October 14, 2020 passed by the learned Civil Judge, Junior Division at Bidhannagar. The plaintiff/opposite party is the wife of the petitioner. By the order impugned, the learned Court below rejected an application under Order VII Rule 11 of the Code of Civil Procedure. The petitioner being the defendant in the suit had filed an application under Order VII Rule 11(d) of the Code of Civil Procedure.

It is the contention of the petitioner that as an application filed by the petitioner is pending before the learned Maintenance Tribunal under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said Act), a parallel suit filed by the plaintiff/wife for declaration and permanent injunction would not be maintainable in view of the bar under Section 27 of the said Act. The learned Court below upon

considering the plaint as a whole came to the conclusion that the suit was for want of declaration and permanent injunction and such a suit was permissible under Section 34 of the Specific Relief Act. The contention of the plaintiff as pleaded in the plaint was that the defendant was trying to drive out and illegally dispossess the plaintiff from the suit property. The prayer for permanent injunction has also been supported by appropriate pleadings and as such the plaint cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

The learned Court below relied on several decisions of the Hon'ble Apex Court and of this Court. The learned Court below also came to the conclusion that the provisions of Section 27 of the said Act would not be applicable in the instant case as the said proceeding had been filed by the defendant/petitioner before the learned Tribunal praying for maintenance from the son, who resides in the same premises. The suit was filed prior to the application filed before the learned Tribunal.

I am in agreement with the learned Court below to the extent that the plaint as a whole discloses a cause of action and the suit for declaration filed by the plaintiff/wife did not have any nexus with the application for maintenance filed by the petitioner/defendant in the learned Tribunal claiming

maintenance from the son, who resides in the same premises.

The said Act was promulgated to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto.

Section 27 of the said Act is quoted below:-

"27. Jurisdiction of civil courts barred. – No Civil Court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act."

Section 4 of the said act is quoted below:-

"4. Maintenance of Parents and Senior Citizens 1. A senior citizen including parent who is unable to maintain himself from his own earning or property owned by him, shall be entitled to make an application under section 5 in case of –

i. parent or grand-parent, against one or more of his children not being a minor

ii. a childless senior citizen, against such of his relative referred to in clause (g) of section 2

2. The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

3. The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

4. Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property."

Section 5 of the said Act is quoted below:-

"5. Application for maintenance 1. An application for maintenance under section 4, may be made –

*a. by a senior citizen or a parent, as the case may be; or
b. if he is incapable, by any other person or organisation authorised by him; or 1.*

c. the Tribunal may take cognizance sua motu
Explanation: For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.

2. The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

3. On receipt of an application for maintenance under sub-section(I), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance

4. An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person: Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

5. An application for maintenance under sub-section (I) may be filed against one or more persons: Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

6. Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

7. Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

8. If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and

may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

Learned Counsel for the petitioner urges that if the son fails to maintain the parents despite an order of the learned Tribunal, the learned Tribunal can also direct eviction. However, there is nothing on record to show that there has been an order of the learned Tribunal as yet, as argued by the learned Advocate for the petitioner. In any case, the plaintiff is not a party to the proceedings before the learned Tribunal. The plaintiff has pleaded the causes of action in paragraphs 7 to 11 of the plaint. The pleadings do not reveal that the cause of action in the suit has any similarity with provisions of Section 4 and 5 of the said Act as quoted above nor can the Tribunal grant the reliefs claimed. This Court at this stage while considering an application for rejection of plaint cannot look beyond the plaint as has been held in several decisions of the Hon'ble Apex Court. The pleading has to be read as a whole to ascertain its true import. Reference is made to the decision of the Apex Court in the matter of **Popat and Kotecha Property**

vs. State Bank of India Staff Association reported in (2005) 7

SCC 510. The relevant paragraphs are quoted below:-

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

This is a suit for declaration. The son, against whom the proceedings before the learned Tribunal, is not even a party to the suit. A plain reading of the plaint does not reveal that the suit is barred under Section 27 of the said Act.

This revisional application is devoid of any merit and the same is dismissed. However, the points raised by the petitioner are issues to be decided at the time of trial.

This order is being passed on the challenge thrown to the order dated October 14, 2020 and the observations made hereinabove are solely for the purpose of disposal of the revisional application.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)