

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO. 381 OF 2017

Punita Capoor

...Applicant.

vs.

Nouveau Exports Pvt. Ltd. & anr.

...Respondents

Mr. Y.C. Naidu with Ishan Srivastav and Virgil Bagaanza for the Applicant in CRA No. 381 of 2017 and Respondent in CRA St. No.32476 of 2016.

Mrs. Sakshi Surendra Sangav-Manager of the Respondent in CRA No.381 of 2017 and for Petitioner in CRA St.No. 32476 of 2016.

CORAM : REVATI MOHITE DERE, J.

DATE : 29th January, 2020

PC:

1. Heard learned counsel for the applicant.
2. By this application, the applicant has impugned the order dated 12.1.2017 passed by the learned Judge, City Civil Court, Bombay in Chamber Summons No.2273 of 2015 in Special Civil Suit No.4341 of 2011, by which the learned Judge was pleased to reject the applicant's chamber summons seeking rejection of the plaint under Order 7 Rule 11 of Code of Civil Procedure.
3. Learned counsel for the applicant submits that the impugned order cannot be sustained having regard to the observations made by the

learned Judge in Para 12 of the said order. Learned counsel relied on several Judgments in support of his submissions, in particular, *Saleem Bhai and ors. vs. State of Maharashtra and ors. in Civil Appeal No.8518 of 2002 decided by the Apex Court on 17.12.2002*. He submits that the learned Judge ought to have only considered the averments in the plaint, to consider whether the plaint discloses any cause of action. He submitted that merely because the respondent had filed their written statement could not have been a ground for rejecting the applicant's application under Order 7 Rule 11 of C.P.C.

4. Mrs. Sakshi Sangav, Manager of Nouveau Exports Pvt. Ltd. (Respondent) is present in person. She states that she wants to engage a new advocate in place of Mr. Shukla. The matter was adjourned on several dates at the behest of the learned counsel for respondent No.1. On 14.10.2019, again the respondent No.1's Advocate sought an adjournment which was granted subject to payment of costs of Rs.15,000/- which were to be deposited in this court within two weeks. Admittedly, the said costs has not been deposited by the respondent No.1 till date. The representative of the respondent No.1 states that she will comply with the said order dated 14.10.2019 within two weeks from today. Accordingly, the respondent No.1 to deposit Rs.15,000/- within two weeks from today. On depositing the said amount, the applicant is permitted to withdraw the same, on showing proof of her identity.

5. Perused the papers as well as impugned order. The Apex Court in the case of *Saleem Bhai and ors. vs. State of Maharashtra and ors.* in Para 9

has observed as under:-

“9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII C.P.C., the averments in the plaint are germane, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

6. A perusal of the impugned order shows that the learned Trial Judge had failed to consider whether the averments made in the plaint discloses any cause of action and whether the same was barred under Section

16 of the C.P.C. Merely because the respondent had filed a written statement in the suit, was not a ground for rejecting the application. Having regard to the judicial pronouncements, it is necessary to quash and set aside the impugned order dated 12.1.2017 passed by the learned Judge, City Civil Court, Bombay in Chamber Summons No.2273 of 2015 in Suit No.4341 of 2011. The Chamber Summons filed by the applicant is restored back to its original file. The learned Judge to decide the said chamber summons as expeditiously as possible and in any event within eight weeks from the date of receipt of this order.

7. Mrs. Sakshi- representative for respondent No.1 undertakes to this court that their Advocate will appear before the Trial Court on the date given by the Trial Court and will co-operate in the expeditious disposal of the chamber summons. All the contentions of all the parties are kept open. Petition is disposed off in the aforesaid terms.

8. At this stage, Mrs. Sakshi- representative of the respondent No.1 undertakes to this court to furnish the correct address of the respondent No.1 to the petitioner 's Advocate within two weeks from today.

9. All parties to act on an authenticated copy of this order.

REVATI MOHITE DERE, J.