Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2129 OF 2015
IN
SUIT NO. 260 OF 2009

Pradeep Asrani ...Applicant/ Deft.No.11

In the matter between
Habibullah Ebrahim Akudi ...Plaintiff
Versus
Parsoli Corporation Ltd. & ors. ...Defendants

WITH
NOTICE OF MOTION NO. 2130 OF 2015
IN
SUIT NO. 260 OF 2009

Christine Schiedermaier ...Applicant/ Deft.No.7

In the matter between
Habibullah Ebrahim Akudi ...Plaintiff
Versus
Parsoli Corporation Ltd. & ors. ...Defendants

WITH
NOTICE OF MOTION NO. 2131 OF 2015
IN
SUIT NO. 260 OF 2009

UTO Baader ...Applicant/ Deft.No.8

In the matter between
Habibullah Ebrahim Akudi ...Plaintiff
Versus
Parsoli Corporation Ltd. & ors. ...Defendants

Mr. Ieshan Sinha, a/w Mr. Aayesh Gandhi, for the Applicant in all Notices of Motion.
Mr. Chirag Balsara, a/w Mr. Huda Diamondwala, i/b Diamondwala & Co., for the Plaintiff.
Ms. Sayli Apte, i/b P. G. Lad, for MHADA.
Mr. Raghav Shekhar, i/b The Law Point, for Defendant no.13.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 4th NOVEMBER, 2019
PRONOUNCED ON: 15th JANUARY, 2020

ORDER:-

1. The applicants - defendant nos.7, 8 and 11 have taken out these Notices of Motion for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('the Code') qua the defendants – applicants as the plaint allegedly does not disclose any cause of action against them.

2. In the affidavit in support of the Notices of Motion, it is averred that the plaintiff has instituted the suit for setting aside the three purported Agreements for transfer of 50,00,000 equity shares of defendant no.1 – company in favour of defendant nos.3 to 5, which were held by the plaintiff, and for allied reliefs. The dispute, thus, revolves around the alleged fraudulent and illegal transfer of the shares in favour of defendant nos.3 to 5. The defendants - applicants contend that the primary reliefs are sought against defendant nos.2 to 5. A sweeping averment is made in the plaint that all the defendants have fraudulently transferred the shares and are liable to pay damages. However, no specific case is made out against the defendants - applicants to demonstrate that the defendants - applicants were in any way liable for the alleged fraudulent and illegal transfer of the shares in favour of defendant nos.3 to 5. It is the claim of the defendants – applicants that though they have been impleaded as Directors of defendant no.1 – company, yet, neither they participated in the meeting of the Board of Directors of defendant no.1 - company held on 2nd September, 2006, wherein the transfer of the shares from the plaintiff to defendant nos.3 to 5 is alleged to have been recorded, nor defendants - applicants were involved in the day to day management of the affairs of defendant no.1 – company.

3. The plaintiff has contested the Notices of Motion by filing an affidavit-in-reply. The tenability of the Notices of Motion at the belated stage is questioned. It is asserted that the Notices of Motion are taken out with an oblique motive to further delay the disposal of the suit. On merits, it is asserted that defendant nos.1 to 11 have fraudulently transferred 50,00,000 equity shares, held by the plaintiff, of defendant no.1 – company in favour of defendant nos.3 to 5. To effect the fraudulent transfer, documents have been forged. Thus, the plaintiff has claimed damages from all the defendants. In the circumstances, it cannot be said that the plaint does not disclose cause of action against the defendants – applicants. The plaintiff has thus prayed for dismissal of the Notices of Motion.

4. I have heard Mr. Sinha, the learned Counsel for defendant nos.7, 8 and 11 – applicants in Notices of Motion Nos.2129 of 2015, 2030 of 2015 and 2031 of 2015 and Mr. Balsara, the learned Counsel for the plaintiff, at some length.

5. It was urged on behalf of the defendants – applicants that a plain reading of the plaint leads to an inescapable inference that the plaint does not disclose any cause of action against the defendants – applicants. Inviting the attention of the Court to the averments in the plaint, the learned Counsel for the applicants – defendants urged with tenacity that apart from bald and omnibus assertions that defendant nos.1 to 11 have fraudulently transferred the shares, held by the plaintiff, in favour of defendant nos.3 to 5 and the defendants are jointly and severally liable to pay an amount of Rs.19,50,39,839/-, as per the particulars of claim, there are no specific averments in the plaint against defendants – applicants. The learned Counsel for the applicants submitted that if the averments in the plaint are read as a whole and in a meaningful manner, it becomes abundantly clear that it does not disclose any right to sue the defendants – applicants.

6. To bolster up this submission, the learned Counsel for the applicants placed a strong reliance on a judgment of the Supreme Court in the case of ***T. Arivandandam vs. T. V. Satyapal***[1], especially the observations in paragraph 5, which read thus:

> "5. ...... The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. ....."
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> (emphasis supplied)

7. As against this, it was stoutly submitted on behalf of the plaintiffs that the applicants – defendants cannot be absolved of the liability for the fraudulent transfer of the shares in favour of defendant nos.3 to 5.

8. At the threshold, it would be apposite to briefly note the nature and the substance of the claim of the plaintiff. From the tenor of the plaint, it becomes evident that the plaintiff rests its claim on the fact that 50,00,000 shares of defendant no.1 – company were allotted to the plaintiff in the capacity of co-promoter of Parsoli (UK) Limited, which was acquired by defendant no.1. Those 50,00,000 equity shares of Parsoli

1 (1977) 4 SCC 467.

Corporation Limited issued to the plaintiff, thus, constituted a part of the promoter’s share holding of defendant no.1 - company. As the plaintiff did not receive any dividend, in the year 2007, on the said equity shares, the plaintiff pursued the matter. It was informed to the plaintiff that the plaintiff ceased to be a share-holder of defendant no.1 – company and those shares were allegedly transferred in favour of defendant nos.3 to 5. The said transfer of shares in favour of defendant nos.3 to 5, under the Agreements dated 21st August, 2006, is alleged to be fraudulent. The plaintiff has thus instituted the suit for declaration that the plaintiff holds 50,00,000 equity shares of defendant no.1 – company and the alleged transfer of 50,00,000 equity shares in favour of defendants is fraudulent, null and void, and for compensation, as stated above.

9. In the backdrop of the aforesaid nature of the claim, the defendants – applicants were impleaded as party defendants in the capacity of the directors of defendant no.1 – company. The substance of the contention of the applicants – defendants is that though the plaintiff may have a cause of action against rest of the defendants, on the strength of the alleged fraudulent transfer of the shares, there are no averments in the plaint to show the cause of action against the applicants – defendants.

10. From a plain reading of the plaint as a whole, which is only required to be considered while determining an application for rejection of the plaint under Order VII Rule 11 of the Code, it cannot be said that the plaint does not disclose a cause of action whatsoever against the defendants. There are averments, and documents annexed to the plaint, which indicate that the plaintiff held 50,00,000 equity shares of defendant no.1 – company. Was the transfer of those shares in favour of defendant nos.3 to 5 voluntary, legal and valid, is the bone of contention.

11. In the aforesaid backdrop, the tenability of the Notices of Motion, which, in effect seek rejection of plaint in part — qua the applicants – defendants is required to be considered.

12. Order VII Rule 11 of the Code reads as under:

> **O.VII R.11. Rejection of plaint**— The plaint shall be rejected in the following cases:—
> (a) where it does not disclose a cause of action;
> (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
> (d) where the suit appears from the statement in the plaint to be barred by any law;
> [(e) *where it is not filed in duplicate;*
> [(f) *where the plaintiff fails to comply with the provisions of rule 9.*]]
> [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

13. The phraseology of Order VII Rule 11, on its plain construction, envisages the rejection of the plaint as a whole. Recourse to the said provision becomes justifiable only when the plaint does not disclose a cause of action. An exercise of dissection of plaint to determine as to whether it does not disclose cause of action qua a particular defendant or claim is not envisaged by the said provision. A plaint either discloses a cause of action or it does not disclose any right to sue. It seems to be impermissible to embark upon an inquiry to determine whether the plaint does not disclose a right to sue a particular defendant and then discharge him form the suit. Thus, the endeavour to seek the rejection of the plaint qua few of the defendants, though it discloses a cause of action against some of the defendants, cannot be legally countenanced.

14. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Sejal Glass Limited vs Navilan Merchants Private Limited***[2]***,*** wherein after adverting to the various judgments of the High Courts, it was enunciated that if the plaint survives against certain defendant and/or properties, Order VII Rule 11(d) will have no application at all, and the suit as a whole must then proceed to trial.

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2 (2018) 11 Supreme Court Cases 780.

15. This position was reiterated by the Supreme Court in the case of ***Madhav Prasad Aggarwal and another vs. Axis Bank Limited and another***[3]***.*** The observations of the Supreme Court in paragraphs 10 and 12 are of material significance; they read as under:

> "**10**. 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 defendant(s) under Order 7 Rule 11(d) 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) 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.
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> **12**. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with 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 CPC. In other words, the plaint as

3 (2019) 7 Supreme Court Cases 158.

> 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 suit concerned 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."
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> (emphasis supplied)

16. In view of the aforesaid exposition of the legal position, even if the case of the applicants – defendants is taken at par, the prayer for rejection of the plaint on the ground that it does not disclose cause of action qua the applicants – defendants does not merit acceptance. Hence, the Notices of Motion deserve to be rejected.

17. Thus, the following order:

The Notices of Motion stand rejected.

[N. J. JAMADAR, J.]