IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.No.6611 of 2018
in C.S.No.380 of 2018

1. S.M.Gutha
2. Mrs. Umar Banu
3. M/s.Steel World,
   Rep.by Mr.Azad,
   No.80/87 Part, MKN Road,
   Guindy, Chennai - 600 032.
4. Mr.Azad
5. Mr.S.Mohideen Abdul Khader
6. M/s.S.N.S.Enterprise,
   No.625, M.K.N.Road,
   Guindy, Chennai - 600 032.
7. M/s. Popular Steel,
   No.625, M.K.N.Road,
   Guindy, Chennai - 600 032.

.. Applicants 1 to 7 /Defendants 1 to 7

Vs.

1. S.Thakeer Ali .. 1st respondent / Plaintiff

2. M/s.Karur Vysa Bank Ltd,
   Represented by its Branch Manager
   No.269, M.K.N.Road, Alandur,
   Guindy Chennai - 600 016.
3. M/s.Hameed Trading Company,
   No.625, M.K.N.Road,
   Guindy, Chennai - 600 032.

.. Respondents 2 & 3 / Defendants 8 & 9

This application filed under Order 7 Rule 11(a) & (d) of CPC r/w section 11 of the Commercial Courts, Commercial Division and commercial Appellate Divisions of High Courts Act, 2015 to reject the plaint as not maintainable in law and on facts with exemplary cost of the applicants.

For Applicants	: Mr.OM.Prakash, Senior Counsel Asst.by S.Anuradha Balaji
For R-1	: Mr.R.Udayakumar for Mr. T.Ramachandran
For R-3	: Mr.A.V.Rathakrishnan

ORDER

This application has been filed to reject the plaint on the ground that the plaint is out of jurisdiction, without cause of action and barred by limitation.

2. The plaint averments are that the plaintiff and the first defendant are brothers. The second defendant is sister-in-law of the plaintiff and wife of the first defendant. The fourth defendant is the brother-in-law of the plaintiff and the fifth defendant is a family friend of the plaintiff.

2.1 In the year 1991, the plaintiff's father passed away and left behind a small amount of liquid cash to the plaintiff and the first defendant. That amount left behind by his father was invested to establish the business under the name and style of M/s.Popular Steels. Though the business was projected as a proprietorship concern with the first defendant as the proprietor, the plaintiff was actively involved in it. The first defendant assured the plaintiff that he will be treated as working partner and payment for the services rendered and one third of the profit will also be paid to the plaintiff. The plaintiff established a concern under the name and style of M/s.Hameed Trading Company, which was projected as the proprietorship concern of the plaintiff. The first defendant controlled the affairs of the said business also. In the due course, another partnership firm was established under the name and style of M/s.Steel World, in which, the defendants 4 and 5 along with the plaintiff and the first defendant, are partners.

2.2 The plaintiff's contention is that taking advantage of the relationship between the plaintiff and the first defendant, contrary to the assurance given, the 1st defendant betrayed the plaintiff and diverted all the monies earned in the three concerns mentioned above, to his benefit. During 2014, the first defendant conspired with the 2, 4 and 5 defendants and diverted all the assets and properties of the M/s.Hameed Trading Company, M/s.Popular Steels, M/s.Steel World and M/s.S.N.S.Enterprises in their names and deprived the plaintiff of his legitimate share in the said enterprises. According to the plaintiff's statement in the plaint, the only blunder the plaintiff committed was that being his brother he believed the first defendant, but they cheated him and purchased properties in their names, in fraudulent means. The present suit is filed for the following reliefs:

> "a. Directing the 1st to 7th defendants to pay a sum of Rs.3,00,00,000/- (Rupees Three Crores Only) to the plaintiff being the plaintiffs share in the estimated profit in the said firms and concerns with interest at the rate of 18% per annum from the date of filing of the suit till the date of realization of the same.
>
> b. By directing the 1st and 2nd defendants to disclose and render accounts of all the immovable properties purchased by them from and out of the profits made from M/s.Popular steels and from and out of the funds misappropriated from M/s.Hameed Trading and M/s.Steel World, M/s.S.N.S.Enterprises.
>
> c. Granting permanent injunction restraining the 1st to 7th defendants from operating the Account No.1104135000001431 in the name and style of M/s.Steel World Current Account with the 8th defendant namely M/s.Karur Vysa bank, Alandur, Chennai - 600 016, without consent of the plaintiff.

d. Granting permanent injunction restraining the 1st to 6th defendants from alienating or encumbering the schedule mentioned properties more fully described in the schedule of property and pass such further orders.

e. The defendant may be directed to pay the cost of suit."

2.3 According to the plaintiff, the cause of action arising for filing the suit, is as follows:-

"The cause of action for the suit arose of Chennai, Guindy, when the plaintiff and the defendant are the partners in the M/s.Popular Steels, M/s. Steel World, and the place of business situated at No.625/1, M.K.N.Road, Guindy, Chennai - 600 032. When the defendant failed to pay amount, when the plaintiffs issued a legal notice to the defendant on 22.10.2016, when the defendant duly received notice issued by the plaintiffs and the same was replied by the defendant counsel on 10.05.2017, but there no settlement was reached, once again on 23.12.2017 a detailed notice was sent to all the defendants to request them to furnish the properties but the 1st and 2nd defendant received the notice dated 26.12.2017 and the remaining defendants refused the notice, when the 1st to 7th defendants try to alienate the suit property by way of sale to the third parties and the plaintiffs have no other option except to come before for the proper relief of suit for accounts and recovery of money suit and the entire cause of action arose within the jurisdiction of this Hon'ble Court."

3. This plaint is sought to be rejected by the first defendant by filing an application, wherein the first defendant has stated that the suit reliefs are generic in nature without any cause of action as against the defendants. Though the plaintiff has stated about the alleged business transactions in the partnership firm and his alleged claim based on his right as a partner of the firm, the suit is not for the dissolution of firms or for accounts in the firm. On the other hand, without any pleading or relief, the plaintiff seeks for realization of money. Further, more than one cause of action is clubbed together and hence, the present suit is not maintainable, without seeking leave for clubbing of all the cause of actions. Without any document in support of the reliefs claimed and also contrary to their own pleadings, the suit has been filed based on the contentions found in the notices exchanged between the parties. Even as per the plaint, the relief sought for is clearly barred by limitation. Relying upon Section 69(1) of the Partnership Act, the first defendant, who has filed an application to reject the plaint would submit that no suit shall be instituted in any Court of law by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is

or has been shown in the Register of Firms as a partner in the firm. Since, the plaintiff has not filed any documentary proof to sustain his cause on the plaint avernments, whether the firms referred to in the plaint are registered. Hence, the plaint is liable to be rejected.

4. On the point of limitation, it is contended that even according to the plaint averments, as early as in the year 2014, the plaintiff has retired from the alleged partnership firm. While so, the present suit is laid only in the nature of the money suit. Hence, the suit is barred by limitation.

5. Heard the learned counsel on behalf of either side and perused the pleadings along with the documents produced by the plaintiff. The citations relied on by the respective counsel are also taken note of.

6. It is settled principle of law that while considering the application Under Order VII Rule 11 of CPC for rejection of plaint, the Court has to look into the pleadings averred in the plaint to get *prima facie* satisfied whether the suit is fit for trial or it is barred by any law.

7. As far as the present case is concerned, the entire averments are based on the premise that the plaintiff and the defendant being brothers, were doing business under the name and style of M/s. Popular Steels, M/s.Hameed Trading Company, M/s. Steel World and M/s.S.N.S Enterprises. Admittedly, none of the concerns are registered as partnership firm. The facts, contrary to material records placed before this Court, are pleaded in the plaint. The only document in the plaint is the reply notice given by the defendants 2 and 4 and one Nizar, wherein it is admitted that the plaintiff was a partner in the firm viz, M/s.Steel World. But no evidence to show the plaintiff has invested substantial amount for the development of M/s.Steel World or on 30.12.2014 the plaintiff was forced to retire from the partnership firm, but they have no intention to settle the amount to him. If the plaintiff is going to rely upon the said notice sent to the defendants 2, 4 and one Nizar, with regard to non-payment of settlement amount, then in the plaint, he should have first disclose about this fact and the deed executed by him on that day. In the notice dated 09.05.2017, it was further stated by the plaintiff that he has invested substantial amount and on 30.12.2014, he was forced to retire from the partnership firm and his signature was obtained in the blank papers under the impression that they are taking signature for

the sake of business; and the settlement amount to the tune of Rs.5 Crores was not paid to him. The said averments were not disclosed in the plaint. Further, he should have filed a suit for declaring the said deed as null and void. Therefore, this Court finds that the cause of action stated in the plaint, does not give any right to the plaintiff to try the matter. If the alleged partnership firm was dissolved on 30.12.2014, the suit is barred by limitation, since it was presented only on 10.03.2018. If the said deed is held as null and void, there should be a prayer to that effect. Since there is no such relief sought, this Court cannot proceed further on the premise that there was partnership business relationship between the plaintiff and the defendants to sustain the present suit.

8. For the above said reasons, the application to reject the plaint is allowed. No order as to costs. Consequently plaint in C.S.No.380 of 2018 is rejected.

28.01.2020

Internet : Yes/No
Index : Yes/No
Speaking Order / Non-speaking Order
av

Dr.G.JAYACHANDRAN,J.

av

A.No.6611 of 2018
in C.S.No.380 of 2018

28.01.2020