

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * * *

C.R.P.No.573 OF 2019

Between:

M/s.Narne Estates Pvt.Ltd.,
Represented by its Chairman and Managing Director
and another.

....Petitioners/Petitioners/Defendants

And

M/s.Gomedha Estates Pvt.Ltd.,
Represented by its Director.

....Respondent/Respondent/Plaintiff

JUDGMENT PRONOUNCED ON: 07.01.2020

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI T.AMARNATH GOUD**

+ C.R.P.No.573 OF 2019

% DATED 07th JANUARY, 2020

M/s.Narne Estates Pvt.Ltd.,
represented by its Chairman and Managing Director
and another.

....Petitioners/Petitioners/Defendants

Vs.

\$ M/s.Gomedha Estates Pvt.Ltd.,
represented by its Director.

....Respondent/Respondent/Plaintiff

<Gist:

>Head Note:

! Counsel for the Petitioners : M/s. Bharadwaj Associates

^Counsel for the Respondents : Sri Mirza Safiulla Baig

? CASES REFERRED:

1. 2019 AIR (SC) 1430
2. (2006) 5 Supreme Court Cases 340

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**C.R.P.No.573 of 2019****ORDER:**

This Civil Revision Petition is directed against the order dated 14.12.2018 in I.A.No.491 of 2018 in O.S.No.21 of 2009 on the file of the XIV Additional District Judge, Ranga Reddy District (for short, "trial Court").

2. The brief facts of the case are that the respondent/plaintiff filed O.S.No.21 of 2009 for specific performance basing on oral agreement of sale. The petitioners/defendants filed their written statement, contending that the suit was filed seeking the relief of specific performance of agreement of sale based on alleged oral agreement; that as the respondent/plaintiff as well as the petitioners/defendants are companies and juristic persons with an entity and legal personality, as such, there cannot be any oral agreement between two juristic persons; that the oral contract will not have any value in the eye of law and therefore prayed to dismiss the suit.

3. During the pendency of the said suit, the petitioners/defendants filed I.A.No.491 of 2018 under Order VII Rule 11 (a) read with Section 151 CPC, seeking to reject the plaint, contending that there is no substantial legal cause of action for filing the suit and the entire basis for filing the suit is based on an alleged oral agreement between two companies is also absurd, speculative and bad in law and therefore prayed to reject the plaint.

4. The trial Court, on consideration of the record, declined to accept the plea of the petitioners and dismissed the interlocutory application. Aggrieved thereby, the present CRP is filed.

5. The learned counsel appearing for the petitioners/defendants submitted that the petition filed under Order VII Rule 11 CPC., shall be decided on the basis of the cause of action disclosed in the plaint. He further submitted that the suit filed by the respondent/plaintiff for specific performance of oral agreement of sale against the company, which is a juristic person, is not maintainable and the plaint is liable to be rejected. He further submitted that a plaint can be rejected at any stage (even at the stage of arguments), provided it is shown that there is no disclosure of cause of action and when the suit is barred by any other statute. In support of his arguments, he relied on a decision reported in **Raghwendra Sharan Singh V. Ram Prasanna Sigh**¹, therefore, he prayed to allow the CRP.

6. Sri S.Niranjan Reddy, learned senior counsel appearing for the respondent/plaintiff, submitted that the petitioners/defendants filed the above IA., when the main suit was coming up for arguments, with an intention to drag on the proceedings in the suit. He further submitted that the contention of the petitioners/defendants that there cannot be an oral agreement between juristic persons cannot be accepted as there is vested power to enter into an oral agreement between both companies

¹ 2019 AIR (SC) 1430

under the Companies Act, 2013 (for short, Act of 2013) and there is no cause of action to file the above suit. He further submitted that as per Section 46 (1)(b) of the Companies Act, 1956 (for short, Act of 1956), oral agreement is valid. Section 465(2)(b) of the Act of 2013 did not come in the way to rescue the petitioners. In support of his arguments, he relied on a decision reported in **PANCHANAN DHARA V. MONMATHA NATH MAITY²**, and therefore, prayed to dismiss the CRP.

7. For better appreciation of the facts of the case, it is necessary to extract the relevant provisions of law:

Section 46 of the Companies Act, 1956 reads as under:

“46. Form of contracts:

(1) Contracts on behalf of a company may be made as follows:-

- (a) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
- (b) a contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.”

Sections 21 and 465 of the Companies Act, 2013 read as under:-

“21. Save as otherwise provided in this Act:-

- (a) a document or proceeding requiring authentication by a company; or
- (b) contract made by or on behalf of a company,

² (2006) 5 Supreme Court Cases 340

may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf.”

465. Repeal of certain enactments and savings:- (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:

Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed:

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

- (a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
- (b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.”

- (i) any prosecution instituted under the repealed enactment and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court.”

Section 10 of the Indian Contract Act, 1872 reads as under:-

“10. What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”

Order VII Rule 11 CPC reads as under:

“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 undervalued, and the plaintiff, on being required by the Court to 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 returned 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 provisions of rule 9

Provided that, the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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-paper, 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.”

8. The crucial question that needs to be decided in this Civil Revision Petition is '*whether the oral agreement of sale entered by two or more private limited companies validly gives rise to cause of action to file suit for specific performance*'.

9. Section 21 of the Act of 2013 lays down the manner in which the document or proceeding requiring authentication by a company or contracts made by or on behalf of a company. There is no provision of oral agreement in the Act of 2013. In view of Section 465(2)(b) of the Act of 2013 coming into force, Section 46(1)(b) of the Act of 1956 is repealed and therefore, the latter is not applicable. Ministry of Law and Justice, Government of India, issued notification dated 30-08-2013, amending the law relating to companies and by the said amendment, Section 46 of Companies Act, 1956 was repealed. In the new Act, it is expressly said "this Act" which means 2013 Act. When there is conflict between the old Act and new Act, new Act will prevail. Application under Order VII Rule 11 CPC can be filed at any stage of the proceedings. Therefore, the contention of the respondent in this regard cannot be appreciated.

10. As per Section 10 of the Contract Act, if law envisages written contract, it should be in writing. Normally, when two companies wanted to enter into an agreement for sale and purchase of land, they must enter into a written agreement, but not by way of an oral agreement. In the present case, it is the case of the respondent

that it entered into an oral agreement with the petitioners for purchase of a huge extent of land, which cannot be believed.

11. The Apex Court in **Raghvendra Sharan Singh's** case (supra) held that:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and merit less in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

12. It is to be noted that a company being an artificial legal person and having no physical existence has necessarily to act through the human agency. A company is competent to contract but the contracts are to be made by the agent acting on behalf of the company. The contracts on behalf of a company may be made in the manner specified in Section 46 of the Act of 1956. This section provides for the form of contracts to be made on behalf of a company, and declares that a contract made according to this section shall bind the company. Clause (a) of sub-section (1) states how contracts in writing can be made and its clause (b) states how contracts by parol i.e. oral or by word of mouth, (also called a simple contract or a contract other than one made by deed or a contract under seal) can be made, on behalf of a company. A contract, which any Indian law requires to be in writing will be validly made by a company if written and signed by a person who acts within the scope of his apparent or actual authority. A contract which can validly be made orally, can be made by a company, provided the person acting on behalf of the company is within his apparent or actual authority. In the present case, there is no Board resolution of the petitioners company, authorizing any person to enter into oral or written agreement on its behalf. It is also one of the circumstance to disbelieve the case of the respondent. There cannot be any contract in contravention to law.

13. The trial Court dismissed the application filed by the petitioners/defendants on the ground that the application is filed when the suit was coming up for arguments. But, as per the

provisions of Order VII Rule 11 CPC., when an application filed for rejection of the plaint, it shall be decided on the basis of the cause of action disclosed in the plaint and the said application can be filed at any stage even at the stage of arguments. In the present case, the trial Court, without deciding the application on the basis of the cause of action mentioned in the plaint, simply dismissed the application on the ground that the said application was filed at the stage of arguments, which is against the provisions of Order VII Rule 11 CPC. In view of the same, it can be said that the trial Court erroneously dismissed the application without properly looking into the provisions of law.

14. The respondent/plaintiff and petitioners/defendants are the companies and in view of the above proposition of law, the oral agreement entered by the two juristic persons is not valid. Therefore, the CRP is liable to be allowed.

15. For the aforesaid reasons, the Civil Revision Petition is allowed and the order dated 14.12.2018 in I.A.No.491 of 2018 in O.S.No.21 of 2009 on the file of the XIV Additional District Judge, Ranga Reddy District, is set aside, consequently plaint in O.S.No.21 of 2009 is rejected. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 07-01-2020

Note:

LR copy to be marked.

B/O

Shr.