

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

FA 154 of 2022
with
IA No.: CAN 1 of 2020

L.M. Techno-Build Private Limited
- versus -
Pranati Ghosh & Others

For the Appellant : *Mr. Amales Ray,*
Ms. Mousumi Bhowal,
Mr. Aman Gupta,
Mr. Somraj Paul,
Mr. Ishan Bhattacharya.

For the Respondent
Nos. 1 to 6 : *Mr. Saptansu Basu, Sr. Adv.,*
Mr. Aninda Bhattacharya.

Hearing is concluded on : *22nd August, 2022.*

Judgment On : **7th September, 2022.**

Raja Basu Chowdhury, J.

1. This appeal has been filed challenging the judgment dated 12th February, 2020 passed by the Civil Judge, (Senior Division), Islampur, Uttar Dinajpur in Title Suit No. 16/2015. By the aforesaid judgment, the learned judge has dismissed the suit by invoking its power under Order VII Rule 11

(d) of the Code of Civil Procedure, 1908 (in short, CPC). In connection with the aforesaid appeal an injunction application being CAN No. 1 of 2020 has also been filed. When the aforesaid injunction application came up for hearing, by consent of the parties, we had proceeded to hear out the appeal as also the application for injunction.

2. The brief facts of the case are that the plaintiff which is company incorporated under the provisions of Companies Act, 1956 has filed a suit *inter alia* claiming a decree for specific performance of an agreement for sale dated 6th November, 2012 and injunction.

3. The plaintiff claims the defendant nos. 1 to 6 to be absolute owners of the suit property. The defendant nos. 7 and 8 had acted as felicitators in connection with sale of the suit property comprising of 33 kathas of bastu land lying and situated at Mouza Islampur, District North Dinajpur, more particularly described in the schedule of the plaint. The plaintiff had inspected the suit property and had thereafter agreed to purchase the same for and at a consideration of Rs. 70,00,000/-, on the terms more fully appearing in the agreement for sale executed on 6th November 2012. The plaintiff claims to have paid Rs. 60,00,000/- to the defendant nos. 1 to 6 as per particulars given in the plaint. The plaintiff has also pleaded its readiness and willingness to comply with the terms of agreement for sale. Since the defendants have not come forward to execute the conveyance despite request, the balance consideration Rs. 10,00,000/- remains unpaid. The plaintiff is willing to make payment of the said sum. The aforesaid suit has been filed sometimes in the year 2015.

4. The defendant nos. 1 and 3 to 6 have jointly filed a written statement.

5. Records reveal, that on 12th July, 2019 the defendant nos. 1 to 6 jointly filed an application under Order VII Rule 11(d) of CPC, *inter alia*, claiming in paragraph 4 and 5 thereof that the director of the plaintiff without any board resolution had filed suit and that the said defendants had been able to ascertain from authentic source that the plaintiff company is no more in existence and as such is a non-existing juristic body who cannot proceed with the suit. Directors of the plaintiff company lose their identity and becomes a non-existing company, hence the application for dismissal of the suit. The said application was contested by the plaintiff by filing written objection. By judgment and order dated 12th February, 2020 which partakes the character of a deemed decree the aforesaid suit has been dismissed by holding *inter alia* that the suit is primarily based on an agreement for sale, the same being insufficiently stamped cannot be considered unless it is properly impounded as per Stamp Act, 1899, and as such is barred by law. The learned Court by concluding that the plaintiff had no locus to continue with the suit, the suit being barred by law rejected the plaint by allowing the application under Order VII Rule 11 of CPC.

6. Mr. Roy learned advocate, appearing in support of the instant appeal impugns the above judgment on several grounds. He submits that while hearing an application under Order VII Rule 11 of CPC, the Court is concerned only with the statements made in the plaint. If from the statements made in the plaint it does not appear that the suit is barred, the plaint cannot be rejected. The instant suit was instituted in the year 2015.

The defendant nos. 1 and 3 to 6 are contesting the suit by filing a joint written statement. No case as regards non-existence of the plaintiff company has been made out in the written statement. In absence of pleadings no issue could have been framed and the learned Court ought not to have decided a preliminary issue against the plaintiff.

7. A challenge to the order of striking off the name of the plaintiff company was pending at the stage when the application under Order VII Rule 11 was filed. At present the name of the plaintiff company has been restored. As to whether the company's name has been struck off or not cannot form subject matter of an application under Order VII Rule 11 of CPC. He says, the plaintiff company's name, has since been restored. The application under Order VII Rule 11 of CPC was not filed praying for rejection of the plaint on the ground that the agreement for sale is unregistered or unstamped. Admissibility of a document can only be considered when the same is tendered as evidence at the time of marking the document as exhibit. Disclosure of a photocopy of a document with the plaint does not attract the provisions of Stamp Act, 1899. The learned Judge erred in dismissing the suit by adjudicating on a preliminary issue while deciding an application under Order VII Rule 11. No such issue was framed, no case for rejection of plaint has been made out. The order impugned should be set aside and the plaint be restored.

8. In support of his above contention, he places reliance upon the cases of Srihari Hanumandas Totala -Vs.- Hemant Vithal Kamat & Ors. reported

in (2021) 9 SCC 99; Biswajit Chakraborty –Vs.– Mira Sen Ray reported in 2002(2) CLJ 449.

9. *Per Contra*, Mr. Basu, Senior Advocate appearing for the respondent nos. 1 to 6 has *inter alia* submitted that the very initiation of the proceedings is bad as there was no authorization for filing the suit. Admittedly when the application under order VII Rule 11 of CPC was filed, the name of the plaintiff company had been struck off, the plaintiff/respondent had acknowledged the same in their written objection as well. The plaintiff company became a defunct company upon its name being struck off. The Court had taken cognizance of the aforesaid fact. Even if no application is filed for rejection of plaint, it is a duty of the Court to dismiss frivolous suits as the Court cannot be burdened with luxurious litigation. It is the statutory obligation of the Court to search, screen and then, eliminate, vexatious or *male fide* litigation. In support of such contention, he places reliance on the following cases; T. Arivandandam -Vs.- T. V. Satyapal & Anr., AIR 1977 SC 2421:(1977) 4 SCC 467; Bijoy Nagar Tea Company Ltd. -Vs.- Narsing Dasgupta & Ors., 2008 (1) CHN (HC) 97 and Sopan Sukhdeo Sable & Ors. -Vs.- Assistant Charity Commission & Ors., (2004) 3 SCC 137.

10. He next submits, when a document forms the basis of a suit, the court is obliged to examine the same and ascertain whether the claim can be sustained on the basis thereof. If on scrutiny it is found that the claim cannot be sustained on account of insufficiently stamped document, the court should impound the same and reject the plaint, if the claim cannot be

otherwise sustained. In this case the suit is based on an agreement for sale which is insufficiently stamped. It is thus the obligation of the Court to impound the same. Since the plaintiff has objected to impounding the said document, the claim cannot succeed.

11. He next urges that in the modern-day, rejection of plaint can no longer be limited to events or circumstances that prevailed at the time of institution of the suit. A validly instituted suit may subsequently be barred by reasons of legislative enactments. The factum of the name of the plaintiff company being struck off from the Registrar of companies may be a subsequent event but the same should not deter the Court from rejecting the plaint by invoking the provisions of Order VII Rule 11 of CPC. The Court rightly rejected the plaint and dismissed the suit. In support his contention, he relies on the following reports; Mira Banki and Ors. -Vs.- Smita Bhattacharya and Ors. reported in 2004(1) CHN 261 paragraph 9; Sumana Venkatesh Nee Sur -Vs.- Susanta Kumar Sur & Ors., 2017 (3) CHN (CAL) 33.

12. We have considered the rival contentions of the parties. We have taken note of the statements and averments made in the plaint. We have also considered the application filed under Order VII Rule 11 of CPC and the written objection thereto filed by the plaintiff.

13. As would appear from above the present appeal deals with rejection of plaint by invoking powers under Order VII Rule 11 of CPC. The circumstances under which a plaint can be rejected has been categorized under Order VII Rule 11 of CPC. From a plain reading of the aforesaid

provision, it will be clear that an obligation is cast on the Court to reject a plaint in case any of the conditions enumerated in Order VII Rule 11 of CPC are met.

14. It is true that the Court ought not to permit a frivolous and vexatious suit to continue, however, in deciding whether a suit is vexatious or frivolous, while exercising its power under Order VII Rule 11 of CPC, the Court should only be concerned with the plaint and the documents appended thereto. If upon 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, the powers under Order VII Rule 11 of CPC should be exercised. Mr. Basu has correctly pointed out that it is the duty of the Court to reject the plaint when the same either does not disclose cause of action or is otherwise barred by law or fulfills any of the conditions as enumerated in Order VII Rule 11 of CPC. The case of T. Arivandandam -Vs.- T.V. Satyapal & Anr. (supra) supports the above view. But it is to be borne in mind that this Hon'ble Court and the Hon'ble Supreme Court in the case of Bijohnagar Tea Company Ltd. -Vs.- Narsing Dasgupta & Ors. (supra) and Sopan Sukhdeo Sable & Ors -Vs.- Assistant Charity Commission & Ors. (supra) while holding that it was the obligation of the Court to dismiss a plaint by exercising powers under Order VII Rule 11 *inter alia* made it clear that such power needs to be exercised qua a meaningful reading of the entire plaint and not otherwise. It thus naturally follows, for the Court to exercise power under Order VII Rule 11, the conditions for order VII Rule 11 should be met

based on the statements made in the plaint itself and documents appended thereto and not otherwise.

15. Although Mr. Basu appearing for the respondents has tried to impress upon us by placing reliance on the judgment delivered in *Sumana Venkatesh Nee Sur -Vs.-Susanta Kumar Sur* (supra) that subsequent events can also be taken into consideration for dismissing a suit under Order VII Rule 11 of CPC, we are not impressed with such submissions. In the aforesaid report the learned Judge in paragraph 10, had proceeded to record that a perfectly valid suit instituted with a plaint disclosing a cause of action may be subsequently seen as barred by law or impermissible to be pursued in a Civil Court by virtue of diverse recent statutes that promote tribunalisation upon emasculating the Civil Court system.

16. It is however not the case of the parties that the plaint has been rendered barred by law on account of any subsequent legislation. There is no dispute as regards the proposition of law as laid down in the case of *Sumana Venkatesh Nee Sur -Vs.- Susanta Kumar Sur* (supra) upon which reliance has been placed by the respondents. However, it is well settled, that a decision is an authority for what it decides and not what can logically be deduced therefrom. The said judgment is distinguishable on facts and has no manner of application in the present case. The same does not come in aid of the respondents.

17. If an application for rejection of a plaint is made on the ground that the name of the plaintiff company being struck off, from the Registrar of companies, Court must acquire such satisfaction from the plaint and

document appended to the plaint. It is well settled that a defense of a defendant, howsoever strong the same might be, is not sufficient for an application under Order VII Rule 11 of CPC to succeed. It is also well settled that while hearing an application for rejection of plaint, the statements made in the plaint are to be taken at face value. It, however, cannot be doubted that a document forming basis of the plaint when produced along with the plaint can be taken into consideration for rejection of plaint under Order VII Rule 11 of CPC. We find support from the judgment delivered in the case of Srihari Hanumandas Totala –Vs.- Hemant Vithal Kamat & Ors. (supra).

18. We may, however, hasten to add that simply because a document is found to be inadmissible in evidence, the same may not disentitle the plaintiff to final relief. We, however, do not wish to prejudge such issue at this stage, as such stage has not arrived. In the instant case the defendant alleges that the document forming basis of the plaint cannot entitle the plaintiff to obtain a decree as the said document is inadmissible in evidence by reasons of the provisions of the Indian Stamp Act, 1899. Mr. Basu has, however, fairly submitted that in the event the document is impounded; stamp duty/ penalty is paid, the same can be exhibited and considered by the court.

19. From the judgment impugned it would appear that the learned Judge has proceeded to conclude, that without impounding the document/agreement dated 6th November 2012, the suit is barred and is not maintainable. We are afraid that the view adopted by the learned Judge

cannot be accepted. In this case there was no bar for the plaintiff to institute the suit with the agreement for sale dated 6th November, 2012. Sufficiency or insufficiency of stamp on such document could have been only taken into consideration by the learned Judge, once the same is tendered in evidence. We have been able to ascertain that only a photocopy of the document has been disclosed along with the plaint. The original has not come forward. Without the original neither can the Court examine the document, nor can it impound the same. No finding could have been rendered by the learned Judge as regards sufficiency or insufficiency of the document unless the same is produced, such stage has not come. We thus find ourselves in agreement with the view adopted by this Court in the case of Biswajit Chakraborty –Vs.- Mira Sen Ray (supra) as regards disclosure of photocopy of a document along with an application for temporary injunction or plaint is not enough to impound the same without production of the original. In our view even if an agreement is made on an insufficiently stamped paper, the provisions of Stamp Act, 1899 would apply for the purpose of impounding the document but that would not make the suit, barred by law or deter the Court from taking a *prima facie* view in favour of the plaintiff, especially when the agreement has not been tendered in evidence. It is not the stage to decide whether the document dated 6th November, 2012 would be impounded or whether the plaintiff would or would not pay the penalty/stamp duty. In any event a suit cannot be dismissed on such ground especially under the provisions of under Order VII Rule 11 of CPC. The defendant in order to succeed in an application filed under Order VII Rule 11 of CPC must demonstrate that the suit is barred from the statement

made in the plaint itself and not otherwise. The case of Sri Hari Hanumandas Totala (supra), supports the above view.

20. We find that the learned Judge while dealing with an application under Order VII Rule 11 of CPC has proceeded to decide on a preliminary issue and has given a finding against the plaintiff company. We have ascertained from the advocates representing the parties that no such issue have been framed far less argued. We are of the view that the aforesaid order passed by learned Judge cannot be sustained, we accordingly set aside the same and restore the suit to its original file and number.

21. Since we have proceeded to hear out the appeal itself and restored the suit to its original number and since none of the parties have advanced any arguments on the injunction application, we do not wish to decide upon the injunction application. It shall be open to the plaintiff to apply before the learned trial court, if so advised. With such observation, the application being IA No.: CAN 1 of 2020, is disposed of.

22. Urgent Photostat copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance of formalities in that regard.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)