

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.41 OF 2021

Ranbir Rushi Kapoor .. Applicant

Vs.

Sheetal Sagar Suryawanshi .. Respondent

...

Mr. S.S. Patwardhan for the applicant.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 04TH JANUARY, 2022.

ORAL ORDER:-

1. By this application, the applicant has put forth prayer clauses 10-A, 10-B and 10-C, which read as under:

“A. Rule be issued and record and proceedings in Special Civil Suit No.139 of 2018, pending on the file of the Learned Civil Judge, Senior Division, Pune at Pune be called for.

B. That this Hon’ble court be pleased to examine the legality and validity of the judgment and order dated 9th of December 2019 passed by the Learned 20th Joint Civil Judge, Senior Division, Pune below Exhibit 15 in Special Civil Suit No.139 of 2018, Exhibit F hereto, and further be pleased to quash and set aside the same.

C. Pending hearing and final disposal of the present Civil Revision Application, this Hon'ble court be pleased to stay all further proceedings in Special Civil Suit No.139 of 2018, pending on the file of the Learned Civil Judge, Senior Division, Pune at Pune."

2. The applicant is aggrieved by the order dated 09/12/2019 passed by the learned 20th Joint Civil Judge, Senior Division, Pune, vide which, application Exh-15, filed by the applicant/original defendant in Special Civil Suit No.139 of 2018, seeking rejection of the plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908 ("**C.P.C.**", for short) has been rejected.

3. The learned counsel for the applicant has strenuously contended that a glance at the pleading in the plaint would indicate that it is barred under clause (d) of Order VII, Rule 11 of the C.P.C. He draws my attention to the portions set out in paragraph Nos.2, 3, 4, 5, 6 and 7 of the plaint. He also refers to paragraph No.10 of the plaint and prayer clause 13(a). These portions of the plaint are reproduced hereunder:

"2. The Plaintiff further states that, the Plaintiff entered into a leave and license agreement on 28.09.2016 with the Defendant in respect of the Said Premises for a period of 24 months starting from 01.10.2016 to 30.09.2018 on the terms and conditions mentioned therein.

3. In view of this understanding only, the Plaintiff had agreed to pay a license fee of Rs. 4,00,000/- for initial twelve months and thereafter Rs. 4,20,000/- for the consequent twelve months. The Plaintiff also advanced an amount Rs. 24,00,000/- as security deposit, which was received and acknowledged by the Defendant.

4. The Plaintiff states that the Plaintiff was shocked to receive an email dated 21.08.2017 from the Defendant's office and the Plaintiff was asked to vacate the Said Premises on 30.09.2017 in contravention of the principal understanding between both the parties regarding the term of the leave and license agreement. In the said notice, it was falsely informed by the Defendant that he wants to shift into the Said Premises, and for this reason, the Plaintiff was asked to vacate the Said Premises in contravention of the terms and conditions of the leave and license agreement.

5. The Plaintiff states that, relying on the false and malicious representations made by the Defendant's office, the Plaintiff vide email dated 12.09.2017 despite of grave inconvenience and hardships agreed to vacate the Said Premises. The Plaintiff vacated the Said Premises on 31.10.2017 as promised in view of the reason notified by Defendant's office.

6. The Plaintiff states that, the Plaintiff has learned and realised that the Defendant and his office maliciously deceived the Plaintiff in vacating the Said Premises before the lock-in period of 24 months on the false premise that the Defendant himself is going to shift in the Said Premises. The Plaintiff has realized that it was a malicious tactic by the Defendant and his office to deceive the Plaintiff in vacating the Said Premises despite grave inconvenience.

7. The Plaintiff states that, the Defendant violated the terms and conditions regarding the lock-in-period of the said agreement. Due to such acts of the

Defendant, the Plaintiff had to suffer severe inconvenience and hardships. Thus, the Plaintiff is entitled to recover damages to the extent of Rs. 50,40,000/- (Rs. 4,20,000 X 12) i.e. the compensation for the remaining period of the leave and license agreement.

10. The cause of action for the first time arose on 28.09.2016 when, the Plaintiff entered into a leave and license agreement with the Defendant in respect of the Said Premises for a period of 24 months. Further it arose on 21.08.2017 when the Plaintiff received an email dated from the Defendant's office and the Plaintiff was asked to vacate the Said Premises on 30.09.2017. Thereafter it arose on 12.09.2017 when, the Plaintiff vide email agreed to vacate the Said Premises despite of grave inconvenience and hardships. Further it arose on 31.10.2017 when the Plaintiff vacated the Said Premises. The cause of action again arose on 21/08/2017 when, the Plaintiff got knowledge that the Defendant and his office maliciously deceived the Plaintiff in vacating the Said Premises before the lock-in period of 24 months on the false premise that the Defendant himself is going to shift in the Said Premises.

13. Therefore, it is most respectfully prayed that:-

a. This Hon'ble Court may be pleased to pass a decree of Rs.51,40,800/- together with future interest at the rate of 12% p.a. from the date of filing of the suit till its realization in favour of the Plaintiff and the Defendant may be directed to pay the same to the Plaintiff forthwith."

4. The learned counsel has drawn my attention to Section 26 under Chapter IV-A – RECOVERY OF POSSESSION OF CERTAIN IMMOVEABLE PROPERTY AND CERTAIN

LICENCE FEES AND RENT, of the Provincial Small Causes Courts Act, 1887. Section 26 reads thus:

“26. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, to lie in Court of Small Causes.-(1) Notwithstanding anything contained elsewhere in this Act, but subject to the provision of sub section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between in licensor and licensee, or a landlord and tenants, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1919 or the Maharashtra Housing and Area Development Act, 1976, or any law for the time being in force, apply.”

5. The vehement contention of the learned counsel for the applicant is that the plaintiff desires that the licence fee may be quantified, the possession of the suit property be delivered to her and the total licence fee be recovered and should be paid to her as she was misled by the malicious act of the defendant to induce

her to vacate the suit property.

6. He further submits that the plaintiff had taken on rent, Flat No.1001 admeasuring 6094 sq. feet built up area located on the 10th floor in a building known as “TRUMP TOWERS” at Kalyani Nagar, Pune, along with three covered car parking and fittings and fixtures. The said premises were received by her from the defendant under a leave and licence agreement dated 28/09/2016. The duration of the agreement was 24 months as a lock-in period. The plaintiff had agreed to pay the licence fee of Rs.4,00,000/- per month for the initial period of 12 months and, thereafter, at the rate of Rs.4,20,000/- per month for the further period of 12 months. A security deposit of Rs.24,00,000/- was delivered to the defendants. However, the plaintiff received an e-mail dated 21/08/2017 from the defendant’s office calling upon the plaintiff to vacate the premises on 30/09/2017, purportedly for the reason that the defendant himself desired to occupy the said premises. Further, the pleadings, portions of which are reproduced above, would indicate that the cause of action that arose and the grievance of the plaintiff.

7. The contention of the learned counsel for the applicant is that considering Section 26 of the Provincial Small Causes Courts Act, 1887 and Section 56 of the Maharashtra Rent Control Act, 1999, the suit would not be maintainable before the learned Civil Judge, Senior Division, Pune and the same would

be maintainable before the Small Causes Court at Bombay. His further contention is that the reproduced portion above, would indicate that the plaintiff desires that she should be delivered the possession of the suit property and, in the alternative, the licence fee should be recovered from the defendant for having evicted the plaintiff from the suit property under misrepresentation.

8. I find that a glance at the impugned order would indicate that the trial court has dealt with all the contentions raised by the defendant in support of the application Exh-15, seeking dismissal of the suit under Order VII, Rule 11(d) of the C.P.C., which reads as under:

“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.]”

9. A glance at the plaint would indicate that the plaintiff has titled the suit as “*Suit for damages under Sections 73 and 74 of the Indian Contract Act, 1872 valued at Rs.51,40,800/-*”. Nowhere in the plaint has the plaintiff contended that the suit property be handed over to the plaintiff or that the plaintiff desires to recover the suit property and gain possession thereof. It is also not set out in the plaint that the plaintiff desires to recover the licence fees from the defendant. The plaintiff has merely calculated the quantum of the damages that she desires to recover from the defendant by mentioning the figure of Rs.4,20,000/- to be multiplied by 12, since she was allegedly misled in handing over the possession of the suit property, 12 months prior to the expiry of the lock-in period of 24 months. The calculation of damages by mentioning the licence fee figure

is only for calculation purpose and would not mean that the plaintiff desires to recover the licence fee from the defendant. The suit is filed purely for claiming damages of Rs.50,40,000/- and the plaintiff desires to prosecute the suit only for the recovery of damages.

10. In **Om Aggarwal v. Haryana Financial Corporation & Ors.**,¹ the Hon'ble Apex Court dealt with the rejection of plaint on the ground that the suit is barred by law. The principle to be applied for invoking Order VII, Rule 11(d) of the C.P.C. was considered, and it was held in paragraph 16, as under:

“16. An application for rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show the suit to be barred by any law. The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the civil court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of Order 7 Rule 11 of the Code. Indeed, this principle of law is well settled.”

11. In **Pawan Kumar v. Babulal (since Deceased) Through Legal Representatives & Ors.**,² the Hon'ble Apex Court has held in paragraph 13, as under:

¹ (2015) 4 SCC 371

² (2019) 4 SCC 367

“13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property v. SBI Staff Assn.: (SCC p. 515, para 10)

"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

12. In the matter of **Dahiben v. Arvindhbai Kalyanji Bhanusali (Gajra) & Ors.,**³ the Hon'ble Apex Court has

³ (2020) 7 SCC 366

dealt with the power under Order VII, Rule 11 to be exercised by a court and the circumstances in which such power could be exercised. In paragraphs 23.3 to 23.6, it concluded that the underlying object of Order VII, Rule 11(d) of the C.P.C. is that the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation so that further judicial time is not wasted. It further ruled that the power conferred on the court to terminate a civil action is, however, a drastic one and the conditions enumerated in Order VII, Rule 11 of the C.P.C. are required to be strictly adhered to. A duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon or, whether the suit was barred by any law. The Hon'ble Court further held in **Dahiben (supra)** in paragraph 23.4, as under:

23.4. In Azhar Hussain v. Rajiv Gandhi, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the

respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

13. It was further held in **Dahiben (supra)** that, while exercising such power, the court would determine if the assertions made in the plaint are contrary to the statutory law or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold, is made out. At such a stage, the plea taken by the defendant in the written statement and an application for rejection of the plaint on merits, would be irrelevant and cannot be adverted to, or taken into consideration (paragraph 23.10).

14. It was then held in **Dahiben (supra)**, in paragraphs 23.11 and 23.12, as under:

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success which reads as: (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not

must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact."

15. It is, therefore, apparent from the case in hand that the suit has been preferred by the plaintiff against the present applicant/defendant for seeking damages. The plaintiff neither prays for recovery of the possession of the suit property, nor to be reintroduced into the suit property as a tenant, so as to further occupy the tenanted property. The applicant/defendant herein, is attempting to cull out a few sentences from different paragraphs to canvass that the plaintiff's suit is for recovery of the possession and recovery of the licence fee. Such contention is frivolous and deserves to be rejected.

16. In view of the above, I do not find that the impugned order

passed by the trial court could be termed as being perverse or erroneous.

17. The civil revision application being devoid of merits, is therefore, dismissed.

[RAVINDRA V. GHUGE, J.]