

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION 6925 OF 2022**

Shaikh Tanveer Alam

...Petitioner

vs.

Siraj Ahmed N. Khan & Ors.

...Respondents

Mr.Uzair Kazi with YMK Legal for Petitioner.

Mr.Saurish Shetye i/b. Swarup Patil with Bharna S. Harade for  
Respondents.

**CORAM : ROHIT B. DEO, J.**

**DATED : 4 JULY 2022**

**P.C. :**

1. The Petitioner is the defendant 1 in L.E.&C. Suit 80/2021 which is instituted by the Respondents 1 to 3 – plaintiffs seeking decree of eviction *qua* the suit property which is described as Shop 4 and Shop A/104. Certain other prayers are made, which need not detain me, considering the compass within which the controversy lies.

2. In brief, the plaintiffs contend that the defendant 1 is a licensee and defendants 2 and 3 are tea, betel leaf and cigarettes vendors, respectively, who are illegally inducted in the suit property. The plaintiffs assert that by and under a registered leave and license agreement dated 13 April 2018, plaintiffs 1 and 2 inducted the defendant 1 in shop as licensee for a period of 36 months from 1.6.2018 to 31.5.2021. The plaintiffs further assert that by separate leave and license agreement dated 13 April 2018, the defendant 1 was inducted in shop A/104 as licensee for the period 1.6.2018 to 31.5.2021. It is the case of the plaintiffs that license fees

of Rs.49,17,900 /- (Rupees Fourty-nine Lakhs Seventeen Thousand Nine Hundred) is due and payable by the defendant 1 in addition to various amounts payable towards the use of electricity and water. The plaintiffs further allege that the defendant 1 has illegally inducted defendants 2 and 3 in the suit premises and is refusing to vacate the suit property notwithstanding the expiry of the leave and license agreement.

3. The defendant 1 filed written statement *inter alia* objecting to the jurisdiction of the Court of Small Causes to entertain and try the suit. The objection to the jurisdiction of the court is predicated on the assertion that there is no relationship of licensor and licensee between the plaintiffs and defendant 1.

4. The defendant 1 preferred an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (Code) seeking rejection of the plaint on the premise that there was an oral agreement whereunder the plaintiffs agreed to sell shop 4 and shop A/104 to the defendant 1 for aggregate consideration of Rs.2,25,00,000/- (Rupees Two Crores Twenty Five Lakhs) and after factoring in the amount of Rs.29 lakhs (Rupees Twenty Nine Lakhs) paid by defendant 1 to the plaintiffs from 2018 till December 2020, the balance consideration of Rs. 1,96,000/- (Rupees One Lakh Ninety Six Thousand) is payable by the defendant 1 to the plaintiffs on or before 31 December 2021 subject to the plaintiffs entering into a registered agreement for sale. In support of the said version, the defendant 1 referred to and relied upon a letter dated 18 February 2021 addressed by his advocate to the plaintiffs' advocate.

5. The learned trial judge was pleased to reject the application

preferred by the defendant 1 for rejection of the plaint under Order 7 Rule 11 of the Code by order dated 14 February 2022, which is impugned herein.

6. The learned trial Judge painstakingly considered the submissions in the context of the decisions on which the contesting parties relied, and observed, and rightly, that while deciding an application under Order 7 Rule 11 of the Code, the consideration must be restricted to the averments in the plaint. The learned trial Judge then observed that the letter dated 18 February 2021 is issued by the defendant to the plaintiffs and in any event the contents do not establish that there was an agreement of sale, as is alleged. The learned trial Judge has further observed that at the stage of deciding the application under Order 7 Rule 11, it cannot be said that non-disclosure of the alleged letter dated 18 February 2021 amounts to such suppression of material fact as would entail rejection of the plaint.

7. The scope and ambit of exercise of power under Order 7 Rule 11 of the Code is well settled. While the Court is expected, and is indeed obligated, to nip in the bud a litigation which is meaningless or an abuse of the process of law or is inevitably doomed for failure, the power to terminate a civil action is considered drastic and in more decisions than one, the Hon'ble Supreme Court has emphasised that the conditions enumerated in Order 7 Rule 11 must be strictly adhered to.

8. While considering an application under Order 7 Rule 11, the inquiry is required to be restricted to the plaint averments and documents which are deemed to be part of the plaint. Suffice it to note, the following

articulation of the Hon'ble Apex Court in **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)**<sup>1</sup> is as under :

“23.6 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint<sup>2</sup>, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

*“14: Production of document on which plaintiff sues or relies.– (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

*(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”* (emphasis supplied)

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be

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1 (2020) 7 SCC 366

2 Liverpool & London S.P. & I Assn.Ltd. v. M.V.Sea Success I, (2004) 9 SCC 512

treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order VII 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 I*, (2004) 9 scc 512 which reads thus (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.” ”

9. In the factual matrix, the suit is instituted on the assertion that the leave and license agreements executed in favour of defendant 1 stand terminated with efflux of time. Indeed, the defendant 1 has not denied that he was inducted in the suit property on the basis of leave and license agreements. However, the defendant 1 asserts that the relationship as licensor and licensee came to an end in view of the oral agreement of sale between the plaintiffs and defendant 1. It is on this premise, that the defendant 1 is contending that in the absence of licensor-licensee relationship, the Court of Small Causes does not have the jurisdiction to

entertain and try the suit.

10. As is the settled position of law, at the stage of considering the application under Order 7 Rule 11 of the Code, neither the defence in the written statement nor the assertions in the application under Order 7 Rule 11 are relevant. The defendant 1 asserts that the oral agreement is substantiated by the contents of letter which his advocate addressed to the plaintiffs. I need not delve deeper in the submission. Suffice it to observe, that it is impermissible to look into the documents on which the defendant is relying to establish his case. It is only the documents which are treated as part of the plaint, that can be considered at the stage of adjudicating of the application under Order 7 Rule 11 of the Code.

11. The learned Counsel for the Petitioner then submits that the plaint is liable to be rejected in view of the suppression of material facts. My attention is invited to the decision of the Hon'ble Apex Court in **S.P Chengalvaraya Naidu (Dead) by LRs. vs. Jagannath (Dead) by LRs.**<sup>3</sup>. In the factual matrix involved, the Hon'ble Supreme Court held that a judgment or decree obtained by fraud is a nullity and can be questioned even in collateral proceedings and that non-disclosure of relevant and material documents in order to obtain undue advantage amounts to fraud. In **S.P Chengalvaraya Naidu**, the partition suit was filed without disclosing deed of release executed by the plaintiff wherein plaintiff had relinquished his right in the property. The plaintiff obtained preliminary decree suppressing the execution of the deed of release. The preliminary decree was set aside on the premise that the same is vitiated by fraud. The learned Counsel for the Petitioner has also pressed in service decision of learned Single Judge in

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3 (1994) 1 SCC 1

**Xavier D'Souza vs.Luis D'Souza<sup>4</sup>** and in particular the observations in paragraph 21, to buttress the submission that plaint can be rejected under Order 7 Rule 11(d) if material facts are suppressed.

12. It is well settled that fraud vitiates every judicial act and if relief is obtained by suppressing material facts or documents, indeed even if an attempt is made to obtain undeserved relief by suppressing relevant and material facts and documents, the litigation can be nipped in the bud. However, the issue is whether the plaintiffs did suppress any material facts or document with intention of securing an undeserved relief. The learned Counsel for the Petitioner would submit that the suppression of the letter dated 18 February 2021 addressed by the advocate for the defendant 1 to the plaintiffs' advocate is suppression of material fact.

13. The plaintiffs, in the affidavit in response to the application under Order 7 Rule 11 of the Code, assert that considering that the suit is instituted seeking eviction on the premise that the leave and license agreements stand terminated with efflux of time, it was wholly unnecessary for the plaintiffs to make a reference to the said letter dated 18 February 2021 in the plaint. The plaintiffs further emphasis that the order of the City Civil Court dated 17 May 2021 which is annexed at Exhibit-I to the plaint makes a reference to the said letter dated 18 February 2021, which would suggest that the defence of the defendant 1, which is that in view of the oral agreement of sale the relationship as licensor and licensee has ended, was disclosed.

14. In the context of the submission that the plaintiffs suppressed

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4 2008 SCC OnLine Bom 588

the letter addressed by the advocate for the defendant 1, it would be apposite to refer to the order dated 17 May 2021 rendered by the learned Judge of the City Civil Court whereby the notice of motion in Suit 4242/2021 is rejected. The Petitioner-defendant 1 is the plaintiff in that suit and the plaintiffs are the defendants. The notice of motion was moved seeking injunctive relief *qua* possession invoking the principle of part performance of contract. Paragraph 2 of the order reads thus :

“2. The plaintiff has come with a case that, he is licensee of two shops owned by defendants No.1 to 3 and has parted Rs.29,00,000/- in consideration of the leave and license agreement. The defendants were to obtain various permissions required to run a Restaurant business in the shops. However, they failed to do so. The plaintiff kept making payments to the defendants till 30.01.2019. Thereafter, since March 2020, due to national lockdown, everyone suffered. Hence, since April 2020 till November 2020 the plaintiff did not insist upon compliance of the obligations in the leave and license agreement. Similarly, defendants also did not insist upon it. Ultimately, on 17.12.2020, the plaintiff served a notice on the defendants. The defendants approached the plaintiff with certain high influential persons of their community. After the discussion it was agreed by the defendants to sell both the shops to the plaintiff for an amount of Rs.2.25 Crores. The amount of Rs.29,00,000/- paid was to be adjusted towards part consideration and an amount of Rs.1.69 lacs i.e. balance consideration was to be paid by the plaintiff on or before 31.12.2021 subject to the defendants entering into registered agreement to sell on or before 31.03.2021. Despite aforesaid oral agreement, the defendants issued notice dated 30.02.2021 asking the plaintiff to vacate the shops. On 09.02.2021 certain anti-social elements approached the plaintiff mentioning that, the defendants will dispossess the plaintiff, if the plaintiff voluntarily did not vacate the suit premises within 15 days. The plaintiff again sent one notice to defendants on 18.02.2021 which the defendants did not reply. On

30.04.2021 the defendants once again issued a notice to the plaintiff calling upon him to vacate the shops.”

It is crystal clear that the order dated 17 May 2021 in Suit 4242/2021 culls out with particularity the case of the defendant 1 herein that there was an oral agreement of sale. The plaintiffs – licensors having annexed copy of the said order of the City Civil Court to the suit plaint, in my considered view, the question of any suppression of fact, much less of such nature as would entail rejection of the plaint just does not arise.

15. Interestingly, the Petitioner–defendant 1 appears to have suppressed the order dated 22 March 2022 rendered by the appellate bench of the Court of Small Causes which confirms the order, which is impugned herein.

16. In any view of the matter, I do not see any reason to interfere with the order impugned in exercise of writ jurisdiction.

17. The writ petition is dismissed.

**(ROHIT B. DEO, J.)**