

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION (CRA) NO. 117 OF 2022

Smt. Suchita Wd/o. Sanjay Jawanjal and anr.

...VERSUS...

Vijay Sureshchandra Gaglani and ors.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms. Ritu P. Jog, Advocate for applicants.

CORAM : SMT. M. S. JAWALKAR, J.

DATE : 08th DECEMBER, 2022

The present revision application is filed challenging the order of rejection of the application filed by the applicants under Order 7, Rule 11 of the Civil Procedure Code.

2. It is the contention of the applicants that the plaintiffs have issued notice through their advocate to "M/s. SPYKER Jeans Private Limited", prior to filing of present suit. However, they concealed the said document (notice) and have not come before the lower Court with clean hands. It is further contention that the plaintiffs deliberately joined defendant no. 3 - Dinesh Khode in his individual capacity though there is no reference of his name in the said notice. It is further contention that the 'Yamuna Enterprises' is unregistered partnership firm and the owner of suit property. However, they have issued notice in their individual capacity. The plaintiffs have concealed material document from the Court and therefore, suit is not maintainable in law.

3. The plaintiffs filed their reply and strongly opposed the application and contended that the suit premises was taken on rent by the husband of respondent no. 1 namely Sanjay in the name of his wife namely Suchita to run the business of selling Television and Electronic Goods in the name and style of defendant no. 2 - Gauri Electronics. It is their further contention that the said Gauri Electronics was kept completely closed for one and half month (as per notice). The license was also not renewed and defendant no. 1 sublet the suit shop to defendant no. 3 who is running business under the name and style of defendant no. 4 in the suit premises by selling ready-made garments manufactured by "SPYKER Company".

4. After considering the rival contentions of the parties, the learned Trial Court observed that the plaintiffs have not denied the issuance of notice to "SPYKER Company". The only contention is that, by issuing the said notice, they called for details from the company, whom they have authorized to give suit premises under what capacity and who has entered into an agreement with it. The plaintiffs have not produced the said notice on record. As such, even if such notice is not placed on record, there will not be any prejudice going to cause to the defendants. Moreover, the suit is not based on the said notice. The learned Trial Court rightly appreciated that the said application is filed belatedly to delay the matter when the suit is fixed for evidence. The suit is pending since 2011. The contention of the applicants is that, it is an unregistered partnership firm. In the plaint itself, it is mentioned that earlier there was a Trust namely "Shrinathji Family Trust" which was subsequently dissolved and the plaintiffs became co-owner of the suit property. Therefore, prima

facie, there is no substance in the contention of the applicants that it is unregistered partnership firm. Otherwise also while deciding the application under Order 7, Rule 11 of C.P.C., the contents in the plaint only to be looked into.

5. The learned counsel for the applicants relied on the citation/ decision in the case of ***Dahiben V/s. Arvinbhai Kalyanji Bhanusali (Gajra) dead thr. LRs. and ors.*** reported in ***(2020) 7 SCC 366***. However, with due respect to the ratio laid down in the said citation, it is not applicable in this present set of facts. Considering the contention of the plaint, prima facie, I do not see the suit is filed vexatiously. As such, the order dated 09/12/2021 passed below Exh. 92 by the learned Trial Court in RCS No. 19/2011 is justified in the facts and circumstances. There is no substance in the application. Accordingly, application stands dismissed.

6. The observations made in this order are prima facie made without prejudice to the parties' rights and contentions.

7. Accordingly, the application stands disposed of.

(Smt. M.S. Jawalkar, J.)