

17.07.2023
Court No. 19
Item no.08
CP

C.O. 1604 of 2022

With

CAN 1 of 2023

With

CAN 2 of 2023

Surina Impex Private Limited

Vs.

One Plus Fashions Private Limited

Mr. Jayanta Sengupta

Ms. Shebatte Dutta

Mr. Aditya Gooptu

Mr. Rahul Auddy

...for the Petitioner.

Despite service none appears on behalf of the opposite party.

The learned advocate appearing on behalf of the opposite party in the court below has been served. The opposite party has also been served by e-mail. The affidavits of service have been filed in court, indicating that steps have been taken to serve the opposite party as also the learned Advocate. The matter is taken up for hearing.

The petitioner has challenged the order dated May 21, 2022, passed by the learned Civil Judge (Junior Division), 1st Court, Alipore in Title Suit No. 152 of 2021. By the order impugned, the learned court rejected the application filed by the defendant/petitioner under Order 7 Rule 11 of the

Code of Civil Procedure. The defendant in the suit, prayed for rejection of the plaint on the ground that liquidation proceedings against the defendant had commenced from February 11, 2020. On the basis of an order passed by the learned National Company Law Tribunal, Kolkata Bench, one Mr. Sanjai Kumr Gupta had been appointed as a liquidator and the defendant was being represented by the liquidator. That the property had vested in the liquidator and in terms of Section 33 of the Insolvency and Bankruptcy Code, no suit or proceeding could be instituted by or against the corporate debtor after a liquidation order had been passed. According to the petitioner the plaintiff was well aware of such liquidation process and the appointment of the liquidator. Hence, the suit against the corporate debtor was bad in law.

Reference has been made to Section 238 of the Code, in order to establish that the Insolvency and Bankruptcy Code would have an overriding effect over all laws, including the laws of tenancy.

On the ground of the suit being barred under the Insolvency and Bankruptcy Code, the application for rejection of the plaint was filed. The learned court upon considering the rival contentions of the parties, rejected the application. The court held that a plaint could be rejected for non-disclosure of cause of

action, under valuation of the reliefs or when the suit was barred by law.

Upon a meaningful reading of the plaint, the learned court below found the averments in the plaint did not mention about the initiation of the liquidation proceeding and appointment of the liquidator. As the requirement of the plaint being ex facie barred by law was not satisfied by the defendant, the application was rejected.

The law is well-settled. At the time of deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the plaint and the documents filed with the plaint can only be looked into. The submissions of the defendant with regard to the liquidation proceeding, the appointment of the liquidator and the liquidator having stepped into the shoes of the defendant were absent in the plaint. The suit was simpliciter one for declaration of tenancy and permanent injunction.

In the decision of ***Kamala and ors. v. K.T. Eshwara Sa and ors.***, reported in **(2008) 12 SCC 661**, the Hon'ble Apex Court held as follows:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments

made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

In the decision of **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.** decided in **Civil Appeal No.- 2737 of 2023**, the Hon’ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

The learned court below rightly refused to reject the plaint. The plaint disclosed a cause of action. It is not a case of clever drafting, attempting to create an illusion of a cause of action. Whether the suit was barred by law, in view of the liquidation proceeding, shall be decided as a separate issue in the main trial, upon evidence.

It also appears that the tenancy was created sometime in 2015, five years prior to initiation of the liquidation process. Hence, at this stage, the plaint cannot be rejected as the plaint discloses a cause of action and the liquidation proceedings do not find any mention.

The revisional application is accordingly dismissed. Connected applications, being CAN 1 of 2023 and CAN 2 of 2023 are also disposed of, accordingly.

Hearing of the suit shall be expedited. The suit should be disposed of within a year from the next date fixed.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)