

Item No. 8
28.08.2023
Court. No. 19
GB/CP

C.O. 2121 of 2023

Zakir Hossain
Vs.
Zubair Ahmed Khan

*Mr. Agniv Sinha,
Ms. Ananya Kanti Roy Saraswati*

...for the Petitioner.

This revisional application arises out of an order dated August 22, 2022 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No.190 of 2021. By the order impugned, the learned court below rejected an application under Order 7 Rule 11 of the Code of Civil Procedure filed by the petitioner, seeking rejection of the plaint.

The petitioner is the defendant in the suit. According to the petitioner, the suit was not maintainable as the subject matter of the dispute was a waqf property. The municipal tax receipts were produced along with the application for rejection of the plaint, in support of the contention that the suit ought to be tried by the waqf tribunal. The deed of lease has been annexed to the revisional application in support of such contention as well.

The learned court below came to a finding that as a landlord-tenant relationship could exist even if the property was a waqf property, Section 85 of the Waqf Act, 1995 would not have any role to play.

Learned advocate for the petitioner submits that the learned court below proceeded on the basis that the dispute

was simpliciter a landlord-tenant dispute. The provisions of Section 83(1) of the Waqf Act had not been considered. Section 83(1) of the Act, by an amendment in 2013 incorporated that eviction of a tenant or determination of rights and obligations of the lessor and lessee under the said Act, would be tried by a tribunal constituted under Section 83 of the said Act. On such proposition of law, reliance has been placed on a decision in the matter of Rashid Wali Beg vs. Farid Pindari, reported in (2021) SCC Online SC 1003. The Hon'ble Apex Court had held that after the amendment of Act 27 of 2013, even the eviction of a tenant or determination of rights and obligations of the lessor and lessee would come within the purview of the tribunal.

The issue is whether, on a meaningful reading of the plaint, the suit would appear to be barred by law. The Ejectment Suit No. 190 of 2021 was filed by the plaintiff claiming ownership in respect of Premises No. 5, Marquis Lane, Police Station – New Market, Kolkata – 700016. The unambiguous statement was that the defendant was a monthly tenant under the plaintiff in respect of one room, kitchen, latrine and bath with balcony on the 4th floor of the premises. That the plaintiff reasonably required the premises for his own use and occupation and for the use and accommodation of his family members, consisting of 18 members. That the present accommodation of the plaintiff was not sufficient. That the defendant had a self-contained residential flat in the same locality. The tenancy was terminated by a noticed dated July 14, 2021 with the expiry of

August 31, 2021. That the cause of action arose on and from September 1, 2021 on the basis of an ejectment notice. The prayers were for recovery of vacant and khas possession of the suit premises upon eviction of the defendant, costs and other reliefs.

In this case, the plaint could be rejected on two grounds. If it did not disclose a cause of action or if the suit appeared to be barred by any law.

The pleadings indicate that the landlord has filed the suit for eviction. The cause of action has been elaborately pleaded. Secondly, the law is well-settled that while deciding an application under Order 7 Rule 11 of the Civil Procedure Code, only the averments made in the plaint and the documents relied upon by the plaintiff could be looked into. In this case, the plaint does not indicate that the property was a waqf property. The suit has been framed as a suit for eviction under the West Bengal Premises Tenancy Act. The documents relied upon by the defendant cannot be pressed into service while deciding such application.

Under such circumstances, this court is of the view that the application under Order 7 Rule 11 of the Civil Procedure Code, was rightly rejected.

Reference is made to 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.”

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.”

The revisional application, is thus dismissed.

However, this court finds that the learned trial court has already decided that the provisions of Section 85 of the Waqf Act, 1995 would not be applicable. Such finding shall

not influence the trial. The question of jurisdiction raised by the defendant, shall be decided. Whether the suit was barred under the Waqf Act, 1995, shall be decided as an issue along with other issues at the trial.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)