

26.07.2023
Sl. No.355(DL)
srm

C.O. No. 2388 of 2023

Sri Dharmendra Shaw

Versus

Rehana Tilat Farooque

Mr. Ranjit Kumar Ray

...for the Petitioner.

This revisional application has been filed against an order dated April 12, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah, in Title Suit No.468 of 2021.

By the order impugned, an application under VII Rule 11(d) of the Code of Civil Procedure, dated February 8, 2022, filed by the defendant, was rejected. The learned court below came to the conclusion that the suit was for recovery of khas possession and damages. There was no averment in the plaint, that the landlord was a thika tenant and the petitioner was a bharatia. Hence, the plaint was not likely to be rejected.

The law is well settled. An application for rejection of a plaint shall be considered only on the basis of averments made in the plaint and also the documents annexed to the plaint. In this case, a meaningful reading of the plaint, does not indicate that the suit property is a thika property and the petitioner is a

thika tenant, who seeks eviction of a bharatia from the thika property.

Under such circumstances, the plaint cannot be rejected at this stage. The suit, as it has been framed, appears to be a suit for eviction of a tenant under the provisions of Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

The contentions of the petitioner could not have been looked into by the learned court below, in order to decide whether the plaint was liable to be rejected at the very inception.

In the matter of *G. Nagaraj & anr. vs. B.P. Mruthunjayanna & ors.* decided in *Civil Appeal No.2737 of 2023*, the Hon'ble Supreme 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.”

In the decision of ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, reported in **(2005) 7 SCC 510**, the Hon'ble Apex Court held as follows:-

“25. When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo* case [(2004) 3 SCC 137] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case.”

Under such circumstances, the order impugned does not call for interference. However, the issue whether the property is a thika property or not and further issue whether the suit is barred by the West Bengal Thika Tenancy (Acquisition and Regulation) Act, can be decided at the trial upon evidence. The plaint, read as a whole, discloses a cause of action and does not appear to be barred by law.

The revisional application is, thus, dismissed.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)