

September 12, 2023
Sl. No.7
Court No.19
s.biswas

CO 3138 of 2022

Sri Shubhro Goswami and another
vs.
Sri Subir Bhowmick

Mr. Nitai Ch. Saha
Mr. Abhijit Ch. Majumder

... for the petitioners

This revisional application arises out of order dated July 5, 2022 passed by the learned Civil Judge (Senior Division), 2nd Court at Howrah, rejecting the application filed by the defendants under Order 7 Rule 11 of the Code of Civil Procedure. The case of the defendants was that the plaint did not disclose any cause of action.

The learned court below was of the opinion that the suit was for damages on the ground of defamation and the same disclosed a cause of action.

The plaint case was that abusive, derogatory and defamatory remarks had been made by the defendants/petitioners against the plaintiff, on November 19, 2022, at a meeting held in the plaintiff's residence. Such meeting was held in the presence of the other people and the derogatory remarks made by the defendants lowered the dignity of the plaintiff in the eyes of the public and the society at large. The plaintiff filed the suit with a prayer for damages for such defamatory statements, and agony caused to the petitioner.

Such cause of action, according to the learned court was enough for trial of the suit and the plaint could not be thrown out at the very first instance.

The learned advocate for the petitioners submits that the plaintiff was engaged by the petitioners for development of a property. The plaintiff paid a part of the consideration money, but failed to pay the remaining amount. That an FIR was lodged with the police station having territorial jurisdiction over the property in question, for offences punishable under the Indian Penal Code. Upon completion of the investigation, charge-sheet was filed and the matter is under trial. Thus, unless the criminal proceedings were concluded and the plaintiff was acquitted, the cause of action to file the suit would not arise. On such ground, the application under Order 7 Rule 11 of the Code of Civil Procedure was filed, seeking rejection of the plaint.

The primary grounds stated in the application for rejection of the plaint were as follows:-

- “a) That the plaintiff did not have a cause of action.
- b) From a plain reading of the plaint it appeared that the cause action for the suit started from 3.6.2020 which was the date of an enquiry by the police personnel in connection with ECO Park Police Station Case No.50/2020 under section 420/406 IPC, filed by the defendant No.1.

- c) If there was no starting point of the cause of action, continuation of the same was an incorrect statement.
- d) The plaint was liable to be rejected for non-disclosure of the cause of action.”

This court has perused the plaint. Paragraphs 1 to 12 of the plaint narrate the dispute between the parties with regard to development agreement. Allegations and counter-allegation have been discussed. Paragraph 13 to 15 which are set out hereunder, indicate the cause of action.

“13. That for causing such defamatory acts of libel and slander, the defendant is liable to pay compensation for loss of reputation, mental pain and agony and his health affected greatly by deterioration since after 08/11/2020.

14. That therefore the plaintiff prays for compensation for defamation of the plaintiff in the society, which may be calculated as for the loss of reputation – Rs.50,00,000.00 (Rupees Fifty Lakhs) only.

15. That the cause of action of this suit arose on and from 03/06/2020 and on 19/11/2020 and subsequent dates thereafter at 63, Gangakanta Bhaduri Street, Post Office and Police Station – Bally, District – Howrah, which is within the jurisdiction of this Ld. Court.”

The learned court below, rightly found that the suit disclosed a cause of action. The prayer was for

damages, for the mental agony, loss of dignity and reputation caused to the plaintiff, on account of the defamatory statements allegedly made by the petitioners. The correctness of such averments, or the truth in such statements, or whether any defamatory statements had been made by the petitioners against the plaintiff in the presence of the public which amounted to demeaning or lowering the estimation or the prestige of the plaintiff in the eyes of public, are matters of trial. The cause of action is based on a claim for damages on account of defamation.

The law is well settled. Even if a semblance of a cause of action is available from a meaningful reading of the plaint, the plaint could not be rejected. Inconsistencies in pleadings should not lead to rejection of the plaint. Further, even if the cause of action was weak and there was little chance of success of the suit, the same would also not be a ground for rejection of plaint.

Reference is made to the decision in **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 **Jageshwari Devi and ors. vs. Shatrughan Ram** reported in **(2007) 15 SCC 52**, the Hon'ble Apex Court held as follows:-

"3. We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view

rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 CPC no exception can be taken to the order."

Under such circumstances, the order impugned does not suffer from any irregularity. Moreover, the contention of the petitioner that the cause of action would arise only if the plaintiff is acquitted from the criminal case, is not tenable in law.

The revisional application is dismissed.

The learned court below shall make serious endeavour to ensure that the suit is disposed of within a year from the next date fixed, without granting unnecessary adjournments to either of the parties.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)