

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 22 OF 2020

Smt. Lilabai Kisanrao @ Kishanlal Sharma

... Applicant
[Orig. Defendant]

Versus

Ratnadeep s/o Sidramappa Utge & Ors.

... Respondents

...

Mr. V. D. Hon – Senior Advocate for the applicant

Mr. Ganesh V. Mohekar – Advocate for respondent nos. 1 to 4

....

CORAM : GAURI GODSE, J.

DATE : 08th FEBRUARY, 2023

PER COURT :

1. This Civil Revision Application is filed for challenging the order dated 06th January, 2020, passed by the 3rd Joint Civil Judge Senior Division, Latur, thereby rejecting the application filed by the deceased applicant (“defendant”) seeking review of the orders passed below Exhibits 11 and 27 on 12th November, 2018. By the said orders under review the defendant’s applications filed under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 [‘CPC’] for rejection of the plaint were rejected.
2. During the pendency of the present civil revision application, the original defendant expired and Civil Application No. 15636 of

2022 is filed for bringing on record the name of heir and legal representative of the deceased/defendant on record, with a prayer for condonation of delay. The said application is opposed by the respondents/plaintiffs by filing an affidavit in reply. It is the contention of the plaintiffs that there are other heirs and legal representatives of the deceased/defendant and the application for heirship certificate is already filed by all the heirs and legal representatives in the district court. The learned counsel for the respondents/plaintiffs also placed on record a copy of the application for grant of heirship certificate which was filed by the heirs and legal representatives of the deceased/defendant.

3. Since a specific objection is raised that there are other heirs and legal representatives of the deceased/defendant, subject to the said objection, the Civil Application No. 15636 of 2022 is allowed and the heir and the legal representative who has filed the application is allowed to be brought on record as heir and legal representative of the deceased/defendant, for the purpose of prosecuting the Civil Revision Application. It will be open to the respondents/plaintiffs to make an appropriate application in the suit for bringing on record all the heirs and the legal representatives of the deceased defendant in the suit.

4. Though the order impugned in the Civil Revision Application is only an order passed rejecting an application for review filed by the applicant, learned counsel for the applicant has argued only on the merits of the orders under review, though, in the Civil Revision Application there is no challenge to the orders under review. All the arguments made by the learned counsel for the applicants were only on the merits of the applications under Order VII Rule 11(a) and (d) of CPC filed by the applicants, which are already dismissed on 12th November, 2018, by the Trial Court. This order dated 12th November, 2018 is not under challenge. Review application was filed on the ground that the order dated 12th November, 2018 was passed behind the back of the defendant and though the advocate for the defendant was not present, the order records that the advocate for defendant is heard. The learned Judge in the impugned order has recorded that there was no mistake or error on the face of the record and there was no case made out to review the order rejecting the defendant's application filed under Order VII Rule 11(a) and (d) of CPC. No case is made out to interfere with the order rejecting the application for review. However, I have heard the learned counsels for the parties on the merits of the order passed rejecting

applications under Order VII Rule 11(a) and (d) of CPC. Hence, submissions on merits for the prayer for rejection of plaint under Order VII Rule 11 of CPC are also considered.

5. It is the contention of the applicants that, there is no cause of action for filing the suit, as the contract between the parties was a contingent contract and hence the claim made in the plaint shows that the cause of action for claiming the specific performance had not arisen.
6. The respondents (“plaintiffs”) filed Special Civil Suit No. 14 of 2018 in the court of Civil Judge Senior Division, Latur, for specific performance of an agreement dated 26th March, 2010. In the suit, the plaintiffs contended that as per the agreement, they had paid Rs. 25.00 lakhs as earnest amount at the time of executing an agreement. It is further pleaded that, as per the clause in the agreement, the defendant was under an obligation to compromise the suit that was pending with a third party in respect with the suit property. After execution of the agreement, the plaintiffs made enquiry about the compromise of the pending litigation, however, the defendant did not take any steps to compromise the court litigation which was pending with respect

to the suit property. Hence, plaintiffs requested the defendant to take positive steps to compromise the pending civil suit and thereafter execute the sale deed in favour of the plaintiffs as per the suit agreement by accepting the balance consideration amount. Since the defendant failed to compromise the suit with the third party, after waiting for a considerable period, the plaintiffs issued a notice through advocate on 02nd February, 2017, calling upon the defendant to compromise the suit with the third party. Thereafter, it is pleaded by the plaintiffs that the defendant requested further amount of Rs.1.00 lakh which was also paid by them. However, when no steps were taken by the defendant, the suit for specific performance was filed.

7. The defendant appeared in the suit and filed two separate applications under Order VII Rule 11 of CPC at Exhibits 11 and 27, thereby contending that as per the suit agreement, the execution of the sale deed was depending upon the compromise of the suit which was pending with the third party and since the suit was not yet compromised, no cause of action had arisen to file the suit. In the second application it was contended that the plaint was required to be rejected as barred by the law of limitation, Indian Contract Act, Income Tax Act and Specific

Relief Act. The said applications were rejected by the learned Trial Judge by holding that for the purpose of deciding the objections that were raised by the defendant a trial is necessary and it cannot be rejected by applying the provisions of Order VII Rule 11 of CPC.

8. The learned Trial Judge had rejected the applications by judgment and order dated 12th November, 2018. The learned Trial Judge specifically recorded that the plain reading of the plaint as well as the supporting documents of the agreement for sale shows that the performance of the agreement was dependent upon the happening of the compromise – future event (contingency) with respect to a separate litigation. However, as the compromise did not take place, the receipt dated 1st April, 2017 was executed by which time was extended till 30th November, 2017. Thus, the learned Trial Judge referred to the averments in the plaint as well as the suit agreement, the notice and the receipt that were relied upon by the plaintiffs and held that at the stage of deciding an application under Order VII Rule 11 of CPC, the court cannot go into the merits of the contentions raised and that the plain reading of the plaint revealed that there was a cause of action pleaded by the plaintiffs. Hence, the learned

Trial Judge refused to reject the plaint on the ground that there was no cause of action as prayed by the defendant.

9. The defendant had filed two separate applications one below Exhibit 11, thereby stating that the plaint was required to be rejected by applying provision of Order VII Rule 11(a) of CPC for want of cause of action and the second application was under Exhibit 27 by contending that the plaint is required to be rejected under Order VII Rule 11(d) of CPC, as the suit was barred by law. By the application below Exhibit 27, the contentions raised by the defendant were with respect to the agreement being a forged and fabricated document and that it was not sufficiently stamped. The learned Trial Judge held that the contentions that were raised by the defendant could not have been dealt with under Order VII Rule 11 of CPC and the same required a trial.
10. The learned counsel for the applicant in support of the application under Order VII Rule 11 of CPC, submitted that admittedly the execution of the sale deed pursuant to the suit agreement was dependent upon the compromise that was to be entered into by the original defendant. As stated in the plaint

itself, the litigation with the third party was not compromised hence, by plain reading of the plaint as well as the clause in the suit agreement, it was clear that no cause of action had arisen. The proceeding with the third party was not compromised. The learned counsel further submitted that since the agreement was a contingent contract, till the fulfillment of the obligation with respect to the compromise with the third party, the plaintiffs had no cause of action to file the suit for specific performance. In support of his submission, the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of *Bharat Aluminium Company Versus Kaiser Aluminium Technical Services Inc.* and other connected matters¹. He specifically relied upon paragraph no. 175 of the judgment of the said decision. He submitted that the Hon'ble Supreme Court has very specifically held that when a cause of action is clearly contingent/speculative, there would be no existing cause of action and the plaint itself would be liable to be rejected under Order VII Rule 11(a) of CPC. Learned counsel further submitted that in the case that was dealt with by the Hon'ble Supreme Court, the suit that was filed was dependent upon the outcome of the arbitration proceedings that were pending outside India and hence the suit that was filed

¹ (2012) 9 SCC 552

for simplicitor injunction was held to be without cause of action till the time the arbitration proceedings which were pending outside India were decided. By relying upon the said observations, the learned counsel submitted that even in the present case, admittedly, the execution of the sale deed was dependent upon the compromise that was to be entered into with the third party in the pending litigation. As the litigation was admittedly not compromised, there was no cause of action arisen for filing the suit and hence as per the law that is laid down by the Hon'ble Supreme Court, the plaint was liable to be rejected under Order VII Rule 11 (a) of CPC.

11. Learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of *Nandkishore Lalbhai Mehta Vs New Era Fabrics Private Limited and others*². The learned counsel relied upon the said decision on the ground that a contract, which was dependent upon happening of any event, is a contingent contract and in the event of non-happening of that event, the party will not be entitled to specific performance. The learned counsel relied upon the said decision in support of his submission that the contract in question was a contingent

² (2015) 9 SCC 755

contract.

12. Learned counsel appearing for the respondents/plaintiffs submitted that the learned Trial Judge has rightly rejected the applications filed by the defendant below Exhibits 11 and 27 as well as the application for review. He submitted that by order dated 12th November, 2018, the learned Trial Judge has specifically examined the pleadings in the plaint with respect to the cause of action that was pleaded by the plaintiffs. The learned Trial Judge has held that, on a plain reading of the plaint as well as the agreement for sale coupled with the receipt dated 01st April, 2017, showed that the execution of the sale deed was dependent upon the happening of a compromise which was a future event and for the purpose of entering into compromise the time was extended till 30th November, 2017 as recorded in receipt dated 01st April, 2017. The learned Trial Judge further referred to a notice published in the newspaper which was filed along with the plaint. The learned Trial Judge after referring to the plaint as well as supporting documents had held that at the stage of an application under Order VII Rule 11 of CPC, it is not permissible to go beyond the basic facts and cannot ascertain the merits with respect to the truth or falsity of the documents. He

therefore submitted that the learned Trial Judge rightly held that the cause of action will be a bundle of facts and in view of the receipt, time for the purpose of performing the terms of the contract was extended. Thus, it as submitted that by examining the pleadings as well as the supporting documents, the learned Trial Judge rightly rejected application filed at Exhibit 11 for the purpose of rejecting plaint for want of cause of action.

13. With respect to the second application which was filed on the ground that the suit was barred, according to the leaned counsel for plaintiffs/respondents, there was no case made out by the defendant which would show that under which provision of law the suit was barred. Hence, the learned Trial Judge rightly rejected the application under Order VII Rule 11(d) of CPC. The learned counsel for the respondents supported the order of rejection of the review application, by submitting that the learned Trial Judge very specifically dealt with the submissions and held that there was no case made out to review the earlier order. He further submitted that the learned Trial Judge also dealt with the objection that was raised by the defendant with respect to the suit being barred under Section 34 of the Maharashtra Stamp Act, 1958 and held that there was no case mad out to reject the plaint

at the threshold as being barred by any of the provisions of the Maharashtra Stamp Act. Thus, he submitted that the civil revision application has no merit and the same may be dismissed.

14. I have perused the copy of the plaint as well as the supporting documents. The respondents/plaintiffs have very specifically pleaded that the defendant failed to compromise the pending litigation with the third party. Hence, the plaintiff called upon the defendant to comply her part of obligation. After waiting for a reasonable period, the legal notice was issued calling upon the defendant to enter into the compromise with respect to pending litigation and execute the sale deed as per the agreement. The plaint further also very specifically averred that after legal notice was issued, the defendant had requested for a further amount which was also paid by the plaintiffs by executing a receipt dated 01st April, 2017 and the defendant had promised to execute the sale deed till 30th November, 2017 by compromising the court litigation. Since the defendant failed to keep her promise, the plaintiffs were constrained to file the suit for specific performance of the agreement. The prayer in the suit also seeks directions to the defendant for compromising the court litigation.

15. So far as the submission of the learned counsel for the applicant with respect to the contract being a contingent contract is concerned, the learned counsel may be right in saying that the contract is a contingent contract, however, it cannot be said that there will be no cause of action for the respondents to seek specific performance of the contract, by praying for directing the defendant to comply with the obligations in the agreement including the obligation for compromising the court litigation which was a condition in the contract, for the purpose of executing the sale deed. The plaintiffs have very specifically pleaded with respect to the terms of the contract in the plaint as well as the subsequent events by which the time to perform the part of contract by the defendant was extended and the defendant was called upon to perform her part of contract. Thus, it cannot be said that the plaintiffs are required to wait for an indefinite time for the purpose of seeking specific performance of the contract.
16. Whether the respondents would be entitled for specific performance or not will be a question of merit that has to be decided after leading evidence and after the trial in the suit. The merits of the contract cannot be a ground to reject the plaint

under Order VII Rule 11(a) of CPC, by holding that there is absolutely no cause of action. The decision of the Hon'ble Supreme Court in the case of *Bharat Aluminium Company* relied upon by the learned counsel for the applicant/defendant will be of no assistance to the applicant for the simple reason that the facts of the case before the Hon'ble Supreme Court were completely different. The facts in the case before the Hon'ble Supreme Court were with respect to a suit filed for simplicitor injunction and the Hon'ble Supreme Court held that the cause of action in the suit was dependent upon the outcome of the arbitration proceedings that were pending outside India. The Hon'ble Supreme Court has very specifically dealt with the facts of those cases and held that pendency of the arbitration proceedings outside India would not provide a cause of action for a suit where the main prayer is for injunction. Thus, the Hon'ble Supreme Court held that the ingredients that were required for the purpose of such a suit were missing in the suit claiming injunction restraining the party from dealing with the property during the pendency of the arbitration proceedings which were going on outside India. It was thus held that the cause of action that was pleaded in the suit would clearly be a contingent /

speculative as the only claim of the plaintiff would depend on the outcome of the arbitration proceeding in a foreign court over which the courts in India would have no jurisdiction. Hence, it was held there was no existing cause of action. Thus, with reference to the facts of the case the Hon'ble Supreme Court held that the plaint itself was liable to be rejected under Order VII Rule 11(a) of CPC.

17. So far as the present case is concerned, the respondents have specifically pleaded the terms in the contract and has also pleaded with respect to the subsequent development of accepting further amount as well as promising to execute the sale deed within the extended time, after entering into compromise with the third party in the pending litigation. Hence, it cannot be said that the cause of action for filing the suit had not arisen at all. Hence, the decision of the Hon'ble Supreme Court relied upon by the learned counsel is of no help to the applicant's case.
18. The decision of the Hon'ble Supreme Court in the case of *Nandkishor Lalbhai Mehta* relied upon by the learned counsel for the applicant is with respect to the interpretation of the term of a contingent contract and whether a party would be entitled to

specific performance when the contract is contingent. So far as the present case is concerned, the suit is pending and whether the respondent would be entitled to specific performance or not would be a subject matter of a trial and hence, the said judgment is not applicable to the facts of the present case at this stage.

19. With respect to the second application that was filed for rejection of the plaint as being barred by law is concerned, nothing specific was argued in the present civil revision application thereby pointing out under which provision of law the suit was barred. The reasonings given by the learned Trial Judge in rejecting the applications under Order VII Rule 11 of CPC, on both the counts are well reasoned and after dealing with the specific case made out in the plaint and the supporting documents. Hence, I do not see any illegality or infirmity in the impugned order, by which the review application is rejected. I do not find any ground to interfere in the limited scope under Section 115 of CPC. Hence, the Civil Revision Application is dismissed.
20. The applicant is permitted to carry out the amendment in the Civil Revision Application as per the order passed in Civil Application No. 15636 of 2022 within a period of four weeks

from today.

21. At this stage, the learned counsel for the applicant prays for extension of interim relief for a limited period. Learned counsel appearing for the respondent raised strong objection for continuation of the interim relief.
22. In view of the facts and circumstances of the case, the interim stay granted by order dated 11th April, 2022 is extended for a period of six weeks.

[GAURI GODSE]
JUDGE