

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 71 OF 2017

KISHOR KALYANRAO GANGANE
VERSUS
SHRI TULJABHAVANI TEMPLE TRUST
THROUGH ITS ADMINISTRATOR SUJIT NARHARI

Advocate for Applicant : Mr. Anandsingh Bayas
Advocate for Respondent : Mr. T.K. Sant
h/f. Mr. P.P. Mandlik

CORAM : R.M. JOSHI, J.

DATE : 03rd April, 2023

PER COURT :

1. This application is filed under Section 115 of the Code of Civil Procedure (for short “CPC”), takes objection to the impugned order dated 21.12.2016, passed by Civil Judge Senior Division, Osmanabad, in Special Civil Suit No. 50 of 2015, whereby, application filed by the defendant was under Order VII Rule 11 of CPC, came to be rejected.

2. Shri Tuljabhavani Temple Trust filed suit bearing No. 50 of 2015 through Administrator against the defendant for defamation and seeking damages of Rs. One Crore. Defendant appeared in the suit and filed application exhibit 11 under Order VII Rule 11 of CPC.

It is the contention of the defendant that the plaint does not disclose cause of action and that the suit is barred by law. Learned Trial Court by passing impugned order rejected the said application.

3. Learned counsel for the defendant apart from filing written notes of argument orally submitted that Trial Court committed error in not considering the provisions of Order VII Rule 11 of CPC in particular Sub Rule (a) and (d). According to him, the suit has been filed without seeking sanction of the Charity Commissioner and, therefore, the suit is not maintainable in view of the provisions of Bombay Public Trust Act (for short “the Act”). He also claims that no cause of action is disclosed in the plaint. To support his contention, he placed reliance on following judgments :

“1. *Dahiben Versus Arvindbhai Kalyani Bhanusali (Gajra) Dead Through Legal Representatives and others*, **(2020) 7 SCC 366**,

2. *K. Akbar Ali Versus K. Umar Khan and others*, **2021 SCC Online SC 238**,

3. *Saleem Bhai and others Versus State of Maharashtra and others*, **(2003) 1 SCC 557**,

4. *Church of Christ Charitable Trust and Educational Charitable Society represent by its Chairman Versus Ponniamman Educational Trust represented by its Chairperson / Managing Trustee, (2012) 8 SCC 706,*

5. *Jagdish S/o. Shankarlal Jaiswal Versus State of Maharashtra and others, order passed by this Court at Nagpur Bench in Civil Revision Application No. 27 of 2022 dated 16th March, 2023,*

6. *Prem Kishore and others Versus Brahm Prakash and others, 2023 SCC Online SC 356.”*

4. The judgment cited above on behalf of the defendant in fact indicates that there is a power with the Court under Order VII Rule 11 of the CPC, to return the plaint and the same power can be exercised at any stage of the suit [reference Church of Crist Charitable Trust and Educational Charitable Society (Supra)]. It is also held in the judgments cited (supra) that the remedy of injunction against institution of the Criminal proceeding is barred under Section 41 of Specific Relief Act, so also, that the averments in the plaint are germane to decide application under Order VII Rule 11 of CPC. There

cannot be any dispute about the proposition of law canvassed on behalf of the defendant. However, question is whether same has application to the present case.

5. In order to appreciate the submissions in connection with the present case, it would be appropriate to take note of provision of Order VII Rule 11 of CPC, which reads thus :

“11. Rejection of plaint.

The plaint shall be rejected in the following cases: –

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9.”*

6. First objection raised by defendant is about cause of action for filing suit. Perusal of plaint shows that the facts necessary to substantiate case of defamation are, *prima facie*, averred. Learned Trial Court has rightly observed in the impugned order in respect of finding cause of action in the plaint. Whether the averments would be sufficient to enable plaintiff for damages or not is matter of evidence. *Prima facie*, consideration of pleading satisfy requirement of disclosure of cause of action to file suit.

7. The law is settled that for the purpose of deciding objection under Order VII Rule 11 of CPC, for rejection of plaint, the pleadings in the plaint only would be relevant and considered by the Court and no other material including written statement and the defence of the defendant can be taken into account for that purpose. In the instant case, there is no dispute about the fact that the Shri Tuljabhavani Temple Trust, is a registered Trust, under the provisions of the Act. The Trust is being legal person can sue and can be sued. Next objection raised by the defendant is about the tenability of the suit on the ground that no permission has been sought under Section 51 of the Act before filing of suit. In this regard, it is pertinent to note that Section 51 of the Act, provides that the consent of Charity

Commissioner is necessary if the suit is of the nature as prescribed in Section 50 of the Act. Said provision, however, does not show that for the purpose of filing suit for damages on account of defamation of Trust consent of the Charity Commissioner is required. The suit filed therefore cannot be treated as barred by any law. Thus, there is no substance in the objection raised by the defendant in respect of the tenability of the suit on this ground.

8. The impugned order, therefore, does not suffer from any infirmity in order to cause interference therein. In the result application stands dismissed. Cost in cause.

9. Learned counsel for the applicant seeks stay of this order. There is neither reason nor justification to stay this order. Hence, request stands rejected.

[R.M. JOSHI, J.]

SPChauhan