

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2205 OF 2023

PETITIONERS : 1) Rao Yashpal Harishchandra Arya,
(Ori.Def-6 & 7) aged about 57 years, Occupation : Business.

2) Snehalata Yashpal Arya
aged about 50 years, Occupation : Business.

All residents of “Sneh” Chitnavis Marg,
Near Hislop College, Civil Lines,
Nagpur – 440001.

...VERSUS...

RESPONDENTS : 1) Rahul Suryalal Jaiswal
(Ori Plaintiff) Aged about 46 years, Occupation :
Business, Resident of Shri Ganesh,
8 Ambazari Road, Laxminagar,
Nagpur – 440022.

(Ori Defs 1 to 4) 2) Ravi Suryalal Jaiswal
Age – 54, Occupation : Business.

3) Reshma Jaiswal
Age – 52, Occupation : Business.

4) Hardik Jaiswal
Age – 26, Occupation : Business.

5) Kartik Jaiswal
Age – 22, Occupation : Business.

All residents of Shri Ganesh,
8 Ambazari Road, Laxminagar,
Nagpur – 440022.

6) Shikshan Sahakari Bank Ltd. through
Ori Def.No.5) its Manager, Head Office, Gandhi Sagar,
Ganeshpeth, Nagpur.

Mr. Rohit Joshi, Advocate for petitioners

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the order : 03/05/2023

Date of pronouncing the order : 05/06/2023

1. Heard Mr. Rohit Joshi, learned Counsel for the petitioners.

2. The petition challenges the order dated 13/03/2023, passed by the 9th Joint Civil Judge Senior Division, Nagpur, in Special Civil Suit No.938/2021 rejecting the application at Exh.42 preferred by the petitioners under Order VI Rule 16 read with Order I Rule 10 (2), Rule 13 and Sections 151 and 153 of the Code of Civil Procedure ("CPC" for short hereinafter) seeking to delete the names of the petitioners from the array of defendants and so also the suit property specified in paragraph 9(c) of the plaint.

3. The property in question as described in paragraph 9(c) of the plaint was the subject matter of proceedings under the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest, Act 2002 (“SARFAESI Act” for short hereinafter).

4. The aforesaid property was originally owned by Shri Suryalal Jaiswal, his wife Smt. Shashikala Jaiswal, both of whom were directors of Shashi Bio Fuels Pvt. Ltd. The petitioners as well as the respondent no.1, were also the joint owners of the said property. On availing a Term Loan of Rs.1.80 Crore and a cash credit facility of Rs.2.20 Crores, by Shashi Bio Fuels Pvt. Ltd. the property was mortgaged with the Shikshak Sahakari Bank Ltd./respondent no.6 under a deed of simple mortgage dated 27/07/2004, to which mortgage, the plaintiff/respondent no.1, as well as the defendant no.1/respondent no.2 were parties. Since there was default, a notice under Section 13(2) of the SARFAESI Act was issued and in the subsequent proceedings the aforesaid property was sold in public auction, in which, it was purchased by the respondent no.3, the wife of the respondent no.1. A sale certificate was issued by the respondent no.6/Bank in her favour on 16/01/2012 (pg.117). The respondent no.3, thereafter by a sale-deed dated 27/04/2014, has sold the said property to the present petitioners/defendant nos.6 and 7.

5. The respondent no.1, has thereafter filed Special Civil Suit No.938/2021, a suit for declaration claiming several reliefs, in respect of the aforesaid property as well as other properties.

6. In this suit an application came to be filed at Exh.42 (pg.105) for striking out pleadings under Order VI Rule 16 r/w Order I Rule 10 (2) and 13 and Sections 151 and 153 of CPC on the following grounds :

(i) that since there was an admission on part of the plaintiff/respondent no.1, of the aforesaid property having been mortgaged to the respondent no.6, Section 34 of the SARFAESI Act, ousted the jurisdiction of the Civil Court, to entertain any suit in respect of any matter which the Debt Recovery Tribunal was empowered to examine and since the plaintiff/respondent no.1, had canvassed a grievance regarding the auction sale made under the SARFAESI Act, on 10/01/2012, by the respondent no.6/Bank, in which the respondent no.3, had purchased the same, the action could not be questioned by the respondent no.1/plaintiff by filing a suit.

(ii) there was no challenge to the title acquired by the present petitioners under the sale-deed dated 27/04/2014 or to the sale certificate dated 16/01/2012, in favour of the respondent no.3

and therefore there was no cause of action as against the present petitioners.

(iii) the suit was barred by limitation, as the plaintiff and his father Suryalal Jaiswal had issued two notices to the petitioners on 03/11/2014 and 06/04/2016 and the suit came to be filed on 16/09/2021 (pg.69).

(iv) since a fraud was alleged by the plaintiff/respondent no.1, in the execution of the deed of mortgage in favour of the respondent no.6/Bank and so also in the execution of the sale certificate, the pleadings were vague and did not comply with the requirements of Order VI Rule 4 of CPC.

(v) the plaintiff/respondent no.1 had also not impleaded the officials of the respondent no.6/Bank who were alleged to have been claimed to be in collusion with the respondent no.2, in the matter of mortgage and auction sale.

7. On the above grounds the following reliefs, were sought (pg.115) :

“(a) deletion of the names of the present petitioners/defendant nos.6 & 7 from the array of defendants;

(b) deletion of the suit property specified in Paragraph 9(c) of the plaint;

(c) deletion of prayer clauses (i), (ii) & (iii) of the plaint.”

This application has been rejected by the learned Trial Court by the impugned order as indicated above.

8. Mr. Joshi, learned counsel for the petitioners/defendant nos.6 and 7, in the above factual background, submits that a conjoint effect of Order VI Rule 16; Order I Rule 13 r/w Sections 151 and 153 of CPC would result in deletion of their names from the array of defendants and so also deletion of the averments in the plaint, vis-a-vis the petitioners, deletion of property as described in para 9(c) and so also prayer clauses (i),(ii) and (iii) from the plaint, as according to him, on account of clever drafting the petitioners who are the *bona fide* purchasers, consequent to the auction sale of the aforesaid property in favour of the respondent no.3, cannot be dragged into the litigation.

9. A perusal of the application at Exh.42 would indicate that the basic grounds raised are relating to rejection of plaint, which have already been raised in the application under Order VII Rule 11 (a) and (d) of CPC filed by the petitioners separately.

10. Insofar as the plea for striking off/out the pleadings is concerned the same finds root in the provisions of Order VI Rule

Rule 16 of CPC. For the sake of ready reference the same is reproduced as under :

“Order VI Rule 16. Striking out pleadings.- *The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -*

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

11. The power under Order VI Rule 16 of CPC is a discretionary one and is to be exercised only when some substantial objection to the pleading complained of or some real embarrassment is shown. The party must always have the right to frame its pleading which right is inviolate, unless it is demonstrated that the pleading violates the provisions of Rule 16 of Order VI of CPC. It is therefore necessary for a party invoking Order VI Rule 16 of CPC to demonstrate as to which specific pleading/averment and in what manner, it violates the rule of pleadings as contained in Rule 16 of Order VI of CPC. A mere mention that there is violation of the Rule of pleadings as contained in Rule 16 of Order VI of CPC would not be enough. It is necessary for a party alleging such violation to point out the specific pleading/averment and in what manner it is either

unnecessary, scandalous, frivolous, vexatious, tends to prejudice, embarrass or delay the trial of the suit or is otherwise an abuse of the process of the Court. Unless these ingredients are satisfied, it cannot be claimed that the pleading/averment, would be required to be struck off.

12. In this view of the legal position, if the application at Exh.42 is perused, it would demonstrate that it does not indicate as to which averment/pleading in the plaint is either unnecessary, scandalous, frivolous, vexatious, tends to prejudice, embarrass or delay the trial of the suit or is otherwise an abuse of the process of the Court. The basic ingredients of the application at Exh.42 have been culled out above, and would indicate that the necessary material to bring home the requirements of Order VI Rule 16 of CPC are clearly absent therein. The application does not refer to any specific pleading/averment and demonstrate as to how it is either unnecessary, scandalous, frivolous, vexatious, tends to prejudice, embarrass or delay the trial of the suit or is otherwise an abuse of the process of the Court, but proceeds upon a generalized proposition based upon the requirements of Order VII Rule 11 of CPC and the absence of reliefs claimed in respect of the sale

certificate in favour of the respondent no.3 and the sale deed in favour of the petitioners, as well as the bar under Section 34 of the SARFAESI Act, which cannot be said to satisfy the requirement of Order VI Rule 16 of CPC. Thus when the application at Ex.42, does not specify which of the pleadings/averments are either unnecessary, scandalous, frivolous, vexatious, tends to prejudice, embarrass or delay the trial of the suit or is otherwise an abuse of the process of the Court, then obviously the provisions of Order VI Rule 16 of CPC cannot be taken recourse to, for the purpose of invoking the discretion of the Court to strike off/out the pleadings/averments, that too on the basis of a generalized plea, without reference to any specific pleading/averment.

13. ***Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others (2004) 3 SCC 137*** relied upon by Mr. Joshi, learned counsel for the petitioners in support of his contention regarding Order VI Rule 16 of CPC does not hold that the pleadings, i.e., the entire plaint can be truck off on account of any of the clauses (a) to (c) as contained therein. ***Ajay Arjun Singh Vs. Sharadendu Tiwari and others (2016) 15 SCC 219*** relied upon by Mr. Joshi learned counsel for the petitioners was a case in which in

an election petition it was held that the principles of law governing the decision on an application under Order VI Rule 16 of CPC was same as those governing decision on the application under Order VII Rule 11 of CPC and therefore while entertaining an application striking off pleadings the Court must presume that all averments/allegations made in the pleadings are factually correct and decide the application by scrutinizing whether allegations are relevant in context of relief sought. ***Madhav Prasad Aggarwal and another Vs. Axis Bank Limited and another (2019) 7 SCC 158*** holds that the rejection of a plaint has to be in whole and not in part or *qua* a particular defendant. Though it holds, that the fact that one or some of the reliefs claimed against the respondent no.1 in the suit concerned is barred by Section 34 of the SARFAESI Act and such objection can be raised by invoking other remedies including Order VI Rule 16 of CPC at the appropriate stage, it does not lay down that the invocation of the provisions of Order VI Rule 16 of CPC, can result in rejection of the plaint. As indicated above, on applicability of the first principles, considering the language of Order VI Rule 16 of CPC and the averments in the application below Exh.42, in absence of any specific pleading being indicated to claim the

requirement of Order VI Rule 16 (a) to (c) being satisfied the plea in this regard cannot be entertained.

14. Though the application at Exh.42 also makes a mention of Order I Rule 10(2) and 13 and Sections 151 and 153 of CPC, it would be material to note that Section 151 of CPC, the inherent power of the Court cannot be invoked when there is a specific provision available. In the instant case, since the power under Order VI Rule 16 of CPC has been invoked, the provisions of Section 151 cannot be resorted to [*see : Arjun Singh Vs. Mohindra Kumar and others (1964) 5 SCR 946 : AIR 1964 SC 993 and Ram Chand and Sons Sugar Mills Private Ltd., Barabanki (U.P) Vs. Kanhayalal Bhargava and others AIR 1966 SC 1899 – para 5*]. Section 153 of CPC is the general power of the Court to amend any defect or error in any proceedings in a suit and would again in light of the provisions of Order VI Rule 17 of CPC would not come to the aid of the petitioners, for the purpose of striking off pleadings or deletion of the petitioners from the array of defendants.

15. Insofar as invocation of Order I Rule 13 of CPC which relates to objections as to non-joinder or mis-joinder are concerned it is material to note that no plaint can be rejected on the ground of

either non-joinder or mis-joinder of a party, at the initial stage of the suit, as that is not in the scheme of either Order VI Rule 16 or Order I Rule 13 of CPC though the suit may ultimately fail upon trial, if it is found that a necessary party was not joined to the suit. In any case all that Order I Rule 13 of CPC says is that an objection as to non-joinder and mis-joinder has to be taken at the earliest possible opportunity and in all cases before the settlement of issues, unless the ground of objection has arisen subsequently, and if not so taken, would not be permissible to be taken at a later stage. Thus Order I Rule 13 of CPC, in my considered opinion, is of no assistance to the petitioners, in their plea to get themselves deleted from the array of defendants.

16. The plea under Order I Rule 10 (2) of CPC is one in which it has to be demonstrated to the satisfaction of the Court that the party which is sought to be deleted is neither a proper or necessary party and is also a matter of discretion of the Court subject to the Court being satisfied in that regard. In the instant case, the deletion of the petitioners/defendant nos.6 and 7 has been sought on the ground that no relief has been claimed in the plaint vis-a-vis the sale certificate dated 16/01/2012 in favour of the respondent

no.3 /defendant no.2 and the sale deed dated 27/04/2014, in favour of the petitioners/defendant nos.6 and 7. The reliefs claimed in the prayer clauses (i) to (iii) which relate to the property described in paragraph 9 (c) of the plaint read as under :

“i. Decree of possessing directing the defendants No.1, 2 ,5, 6 & 7 to deliver the vacant possession of property described at Sr. No. ‘c’ viz. Mouza : Sitabuldi, Municipal House No.310/0+5, Ward No.66, Sheet No.13/56, City Survey No.1651, Chalta No.3, Khasra No.220, Joint Hensey Road, Temple Road Corner, Civil Lines Nagpur admeasuring 6190 sq. ft. by removing the structure unlawfully constructed thereon;

ii. Decree of permanent/perpetual/prohibitory injunction restraining the defendant No.6 & 7, their agents, servants, legal heirs/representatives from proceeding with any further construction work and from anyway occupying and possessing the structure of house constructed on property described at Sr. No.‘C’ viz. Mouza : Sitabuldi, Municipal House No.310/0+5, Ward No.66, Sheet No.13/56, City Survey No.1651, Chalta No.3, Khasra No.220, Joint Hensey Road, Temple Road Corner, Civil Lines Nagpur admeasuring 6190 sq. ft. and from claiming any right over it on the basis of said false, frivolous, sham, bogus, null void and fraudulent Sale Certificate and other documents and getting the said property mutated in their names;

iii. Decree of mandatory injunction directing the defendants No.6 & 7 to demolish the construction unlawfully carried out on the property described at Sr. No.‘c’ viz. Mouza : Sitabuldi, Municipal House No.310/0+5, Ward No.66, Sheet No.13/56, City Survey No.1651, Chalta No.3, Khasra No.220, Joint Hensey Road,

*Temple Road Corner, Civil Lines Nagpur admeasuring 6190 sq. ft.
or in the event of failure, authorize the plaintiff to demolish it at
the expenses and risk of the defendants.”*

A perusal of the reliefs claimed by the plaintiff/respondent no.1 in the plaint would indicate that prayer clause (ii) claims a relief also in respect of the sale certificate and other documents, as being false, frivolous, sham, bogus, null, void and fraudulent, which would also include the consequent sale-deed dated 27/04/2014 in favour of the petitioners/defendant nos.6 and 7. The genesis of this relief, stems from the allegation that the respondent no.2, in collusion with the respondent no.6/Bank, has got the property as described in plaint paragraph 9(c) purchased in public auction in the name of his wife/respondent no.3, for a paltry sum of Rs.1.47 Crores under the sale certificate dated 16/01/2012 (pg.117) as against which the same has been transferred by the respondent no.3, in favour of the petitioners/defendant nos.6 and 7 on 27/04/2014 for the consideration of Rs.3.75 Crores. Since the property, which is the subject matter of the sale deed dated 27/04/2014, in favour of the petitioners/defendant nos.6 and 7, is also the subject matter of the suit as filed by the plaintiff/

respondent no.1, there is now clearly a cloud over the title of the petitioners/defendant nos.6 and 7 and therefore it cannot be said that the petitioners are neither proper nor necessary parties to the suit. That apart it is also material to note that on the complaint of the respondent no.1/plaintiff an FIR was registered against the respondent nos.2 and 3 and a charge-sheet has also been filed, which relates to the transactions as mentioned in the plaint.

17. A perusal of the reliefs as claimed in Ex.42 as quoted above would demonstrate that not only the entire averments in the plaint are sought to be struck out as against the petitioners, but it goes a step further seeking to delete reliefs (i) to (iii) as claimed in the prayer clause of the plaint. The scope of Order VI Rule 16 of CPC in my considered opinion would not extend to deletion of reliefs as claimed in the prayer clause in a plaint, as what relief is to be claimed is the sole domain of the plaintiff and the defendants cannot object that such a relief cannot be claimed and needs to be deleted from the prayer clause of the plaint. It is quite a different thing altogether that on trial of the suit the Court may decline to grant reliefs as claimed in the entire prayer clause or some of the reliefs as claimed therein. The defendants certainly cannot by invoking

Order VI Rule 16 of CPC seek deletion of any of the reliefs as claimed in the prayer clause of the plaint.

18. In light of the above discussion, I do not find any scope to interfere in the impugned order as passed by the learned Trial Court, rejecting the application at Ex42. The writ petition is, thus, without any merits and is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar