



C.R.P.No.118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.118 of 2023

and

C.M.P.No.956 of 2023

B.Ravichandran

...

Petitioner

Vs

P.Krishnamoorthy

...

Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 29.07.2022 in I.A.No.1 of 2021 in O.S.No.76 of 2019 on the file of the II Additional District Judge, Vellore at Ranipet and allow the present revision petition.

For Petitioner : Mr.D.Ravichander



C.R.P.No.118 of 2023

ORDER

The civil revision petition is filed against the order and decretal order dated 29.07.2022, passed in I.A.No.1 of 2021, in O.S.No.76 of 2019. The revision petitioner is the defendant and the respondent is the plaintiff who instituted a suit for the recovery of money.

2.The revision petitioner/defendant filed an Interlocutory Application in I.A.No.1 of 2021 under Order VII Rule 11 of CPC to reject the plaint. The revision petitioner/defendant filed a written statement within the time limit. The Trial Court considered the grounds raised in the Interlocutory Application filed under Order VII Rule 11 of CPC and dismissed the same on the ground that the revision petitioner has not raised any acceptable ground. Thus, the present civil revision petition is filed.

3.The learned counsel for the petitioner drew the attention of this Court with reference to the contentions raised by the respondent/plaintiff in the plaint. Certain details of business transactions would reveal that the same occurred at various places, however, not in the place where the suit



C.R.P.No.118 of 2023

was instituted. The learned counsel for the petitioner further contended that there is no cause of action for the institution of the suit at Vellore, and therefore, the plaint is to be rejected. In this regard, the learned counsel for the petitioner relied on the averments in paragraph 9 , 10 and 13 of the plaint.

4.However, the cause of action set out in the plaint reveals that the suit arose at Ranipet, within the territorial jurisdiction of the Court in which the suit was instituted from the year 2003 onwards, when the plaintiff had entered into an oral partnership with the defendant in the year 2010, in Ranipet, each contributing a sum of Rs.50 lakhs. When the plaintiff has been awarded many tenders by the Department of Forest, Government of Tamil Nadu, to cut Prosopsis Juliflora Trees in and around the Vellore District, which falls within the territorial jurisdiction of the Court at Vellore, the plaintiff sent the cut trees to the defendant, the defendant sold the same, and when the defendant failed to pay the plaintiff his rightful half share out of the sale proceeds, the plaintiff made repeated demands for the money due from the defendant. The defendant acknowledged the debt and paid the



C.R.P.No.118 of 2023

plaintiff a sum of Rs.38,52,750/- in the year 2017 and 2018. When the plaintiff had given a power of attorney in favour of the defendant, the defendant had sought for an adjournment and when the defendant completed the work on 30.06.2017, the defendant has failed to pay the balance sum of Rs.40,98,125/- on various dates when the plaintiff has demanded, which arose a cause of action.

5.The bundle of facts set out in the cause of action column would reveal that there were alleged oral partnership existing between the plaintiff and the defendant, and the plaintiff was awarded many tenders by the Department of Forest and after cutting trees in various places in Vellore, he transported the same to the defendant for the purpose of selling the same and paying his half share. Thus, the facts as narrated in the cause of action paragraphs would reveal that several transactions occurred between the parties and such issues are triable and to be adjudicated with reference to the documents and evidence made available between the parties.



C.R.P.No.118 of 2023

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6.The power under Order VII Rule 11 of CPC is to be exercised sparingly by the Courts. All the suits are to be adjudicated on merits and in accordance with the law. Lenient view is certainly not desirable when the plaint and cause of action reveals certain facts and therefore, the Courts are expected to be doubly cautious while exercising the power under Order VII Rule 11 of CPC. There may be vexatious suits which all are instituted by the litigants. May that as it be. Even in such cases, if there are certain doubtful facts or otherwise, then conducting a trial would be more preferable than rejecting the plaint. Order VII Rule 11 of CPC enumerates rejection of plaint on certain circumstances as contemplated under sub-clause (a) to (f) in Rule 11.

7. Order VII Rule 13 of CPC denotes: *“The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”*



8.Holistic reading of Order VII Rule 11 and Rule 13 of CPC would reveal that Order VII Rule 11 is intended to reject the plaint more on technical grounds rather on merits. Thus, even in case, a plaint is rejected under Order VII Rule 11 by the Courts, then the plaintiff is entitled to institute a fresh suit by correcting the cause of action or the mistakes or otherwise, by invoking Order VII Rule 13 of the Code of Civil Procedure. Thus, rejection of plaint is not a total bar of institution of a fresh suit by the plaintiff which can be instituted after setting out the correct cause of action or by rectifying the errors or mistakes if any found, which was the basis for rejection of the plaint.

9.Careful reading of Order VII Rule 11 would reveal that the Courts are empowered to reject the plaint on certain specific circumstances. On certain specific circumstances, the language employed in Order VII Rule 11 Sub-clause (a) is that “*where it does not disclose a cause of action*”, it does not states that “where there is no cause of action”. There is a difference between “no cause of action” and “it does not disclose a cause of action”. In the second phrase, there is a cause of action but it was not disclosed in the



plaint. That exactly is the reason to reject the plaint. If so, the plaintiff would natural be entitled to set out the cause of action in a correct manner and institute a fresh suit as per Order VII Rule 13 of CPC. In this regard, Order VII as a whole must be considered by the Courts.

10.Order VII Rule 7 denotes relief to be specifically stated in the plaint. Accordingly, every plaint shall specifically state the relief which plaintiff claims, either simply or alternatively, and it shall not be necessary to ask for general or other relief which may always be given at the Court, just to the same extent as if it had been asked for, and the same rule shall apply to any relief filed by the defendant in his written statement. Rule 9 speaks about “*procedure on admitting the plaint*”, Rule 10 stipulates “*return of plaint*”. Thus, Rule 11 contemplates “*rejection of plaint*”. Once the plaint is not in compliance with the other rules contemplated under Order VII, then such claims are to be rejected under Rule 11 of CPC. If it is rejected on the ground stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit, setting out the corrections or cause of action as the case may be and proceed with the suit. No other ground, on which the plaint was



C.R.P.No.118 of 2023

rejected, other than those mentioned under Rule 11, can be saved under Rule 13, except when the suit was instituted afresh, correcting the cause of action or mistakes or otherwise.

11.Holistic reading of the Order VII would clarify that no plaint is to be rejected on merits. The Trial Court cannot adjudicate the merits in an Interlocutory Application filed under Order VII Rule 11. Even if the cause of action is improperly set out, the plaint as a whole must be read and merely on the basis of the facts in one paragraph or in the cause of action paragraph, plaint need not be rejected under Order VII Rule 11 of CPC.

12.This exactly is the reason why this Court has to emphasise that the power under Order VII Rule 11 has to be exercised sparingly and even if the plaint is rejected on the ground stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit by setting out the correct cause of action or correcting the mistakes on which the plaint was rejected, or otherwise. The intention of the Court is not to deprive a person to get relief on the adjudication of the facts on merits. The spirit of the code in this



C.R.P.No.118 of 2023

aspect is to be borne in mind by the Courts while dealing with the Interlocutory Applications filed under Order VII Rule 11 of CPC.

13.In the present case, considering the bundle of facts as narrated in the cause of action column and the nature of the partnership relationship between the parties to the suit, this Court is of an opinion that the suit is to be adjudicated on merits and thus, there is no infirmity in respect of the order of rejection passed by the Trial Court in I.A.No.1 of 2021 in O.S.No.76 of 2019 and thus, the same stands confirmed.

14.Accordingly, the civil revision petition stands **dismissed**. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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23.01.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.



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C.R.P.No.118 of 2023

S.M.SUBRAMANIAM, J.

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Copy to:
II Additional District Judge, Vellore at Ranipet.

C.R.P.No.118 of 2023

23.01.2023