A.No.1195 of 2021
in
C.S.No.950 of 2009

Reserved on 01.12.2022	Pronounced on 12.01.2023

G.CHANDRASEKHARAN, J.

A.No.1195 of 2021 is filed for rejection of plaint in C.S.No.950 of 2009.

2.The learned counsel for the applicants/defendants 1 & 2 submitted that the respondent/plaintiff filed a suit against the defendants seeking direction against the defendants 1 & 2 to pay the plaintiff a sum of Rs.18,77,76,900/- together with interest at 24% from the date of the plaint till the date of payment and for costs. The suit is filed by the respondent/plaintiff against the defendants alleging that the defendants 3 to 6 are working as office bearers in the 1st defendant. The 1st and 3rd defendant, on behalf of the 1st defendant entered into a memorandum of understanding with the plaintiff on 30.03.2005 and in January 2006. As per the memorandum of understanding, funds were received by the 1st defendant. 4th defendant was appointed as Liaison and 5th defendant was appointed as Associate Liaison on the recommendation of the 3rd defendant. As per the memorandum of understanding, (a) funds have to be used in accordance with the memorandum of understandings' express terms (b) defendants to provide quarterly narrative and financial reports to the plaintiff (c) defendants have to return all the funds not spent according to the terms described and within twelve months after the end of the project period. (d) defendants should co-operate with the plaintiff or its agents for auditing into the financial and/or administrative activities of the defendants 1 & 2. (e) the 1st defendant's assets are held in the name of the 2nd defendant. Despite several request by the plaintiff for the various information for the purpose of conducting comprehensive auditing activities, the defendants failed to provide any assistance. The memorandum of understanding was executed for Tsunami relief operations. It came to the notice of the plaintiff that funds were unauthorisedly used. The defendants secured the relief of funds without disclosing the statutory violations done by the first defendant in receiving the foreign contributions. In the said circumstances, the suit came to be filed for the reliefs aforestated.

3.The application for rejecting the plaint is filed primarily under the following two grounds:

(a) in paragraph 3 of the plaint, it is stated that "the 2nd defendant is the Registered Society, in whose name all the assets of the 1st defendant are held. Therefore, the 2nd defendant is jointly and severally liable to return the funds provided by the plaintiff to the 1st defendant". The 2nd defendant is not a Society, but a Company incorporated under the Companies Act. When it was brought to the notice of the plaintiff, the plaintiff filed an application in A.No.58 of 2021 for amending the plaint. Thereafter, the plaint was amended stating that 2nd defendant is a Company incorporated under the Companies Act. This amendment was ordered only on 19.01.2021. On the date of filing the suit, the 2nd defendant was shown only as Society and not as a Company and therefore, the subsequent amendment on 19.01.2021, will not save limitation. When the 2nd defendant was not shown as a Company at the time of filing of the suit, the suit against the 2nd defendant is barred by limitation.

(b) It is admitted that the amount was remitted into the account of the 2nd defendant and it is governed by the Foreign Contribution Regulation Act. In view of the Foreign Contribution Regulation Act, the suit filed for recovery of money remitted under the Foreign Contribution Regulation Act is barred.

4.On these two grounds, the application has been filed for rejection of plaint and the learned counsel for the applicants/defendants 1 & 2 prays for rejecting the plaint.

5.In reply, the learned counsel for the respondent/plaintiff submitted that the respondent provided funds to the 1st & 2nd defendants through 2nd defendant's bank account for Tsunami relief and rehabilitation wok. The utilisation of the funds have not been accounted for in accordance with the understanding between the parties. Originally, the 2nd defendant was mentioned as a Society registered under the Tamil Nadu Societies Registration Act. When it was brought to the notice of the respondent/plaintiff that the 2nd defendant is a Company incorporated under the Companies Act, respondent/plaintiff filed an application for deleting the reference in the plaint as Society and for describing the 2nd defendant as a Company. That application was allowed and amendment was carried out. Trial in this case is over and the matter is pending for arguments. At this stage this application is filed.

6.As per the Foreign Contribution Regulation Act, defendants 1 & 2 are not entitled to receive any foreign contributions from any persons or institution without obtaining prior approval from the Central Government and bound to furnish accounts. However, defendants 1 &2 failed to fulfil the statutory obligations as required under this Act and suppressed about the controversies of the provisions of the Act at the time of signing the memorandum of understanding between the parties. It is admitted by the defendants that the amount had been credited in the name of foreign contribution account of the 1st defendant. It is not correct to state that the amount deposited in the foreign contribution account given by the plaintiff for noble cause cannot be recovered on the fault of the defendants in misutilising the amount. This application has no merits and it is liable to be dismissed.

7.Considered the rival submissions and perused the records.

8.It is seen from the submissions that the scope of filing of this application is very limited, in the sense that, this application is filed only on the aforesaid two grounds.

9.So far as the first ground is concerned, the mistake in the description of the 2nd defendant as Society instead of Company was corrected by appropriate amendment as per the order of this Court. Therefore, the claim of the applicants that there is no limitation on the date of showing the 2nd defendant as Company and therefore, the suit is barred by limitation against the 2nd defendant cannot be accepted. It is a mere error and once an error is corrected, it is presumed that the suit is filed against the 2nd defendant as a Company right from the institution of the suit.

10.As regards the claim of depositing the amount in Foreign Contribution Account, it is admitted by the defendants 1 and 2 that the amounts are deposited in the Foreign Contribution Account of the 2nd defendant. Only now the plaintiff realised that the defendants 1 & 2 violated the provisions of the Foreign Contribution Regulation Act. The learned counsel for the applicants is not able to show under what provisions of the Foreign Contribution Regulation Act, the suit is barred.

11.Order VII Rule 11 CPC deals with the rejection of plaint. The plaint can be rejected only when it comes under any one of the grounds mentioned in Order VII Rule 11 CPC. The Hon'ble Supreme Court in ***Dahiben vs. Arvindbhai Kalyanji Bhanusali***, reported in **(2020) 7 SCC 366** has observed as follows:

> ***23.1.*** *We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:*
>
> *"**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 undervalued, and the plaintiff, on being required by the court to 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:

Provided that the time fixed by the court for the correction of the valuation or supplying of the *requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."*

(emphasis supplied)

23.2. *The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

23.3. *The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to* *the sham litigation, so that further judicial time is not wasted.*

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

"12. … The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.7. *Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:*

*"**14. Production of document on which plaintiff sues or relies**.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall,*

at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(emphasis supplied)

23.8. *Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding* *the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v.*

M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3*

SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .*

> ***23.15.*** *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.*

The applicants have not made out any of the grounds mentioned in Order VII Rule 11 CPC for rejection of the plaint.

11.In view of the reasons aforestated, this Court finds that the grounds raised by the applicants for rejection of plaint have no force and therefore, the application is dismissed.

sli **12.01.2023**

G.CHANDRASEKHARAN , J.

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Pre-Delivery Order in
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in
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