

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P. No: 418 of 2021

Petition under Article 227 of the Constitution of India aggrieved by the order dated 08-02-2021 in IA.No.364 of 2020 in OS.No.164 of 2018 on the file of the Court of the XXVII Additional Chief Judge, FAC XII Additional Chief Judge, City Civil Court, at Secunderabad.

Between:

K. Amarnath, S/o. Late K. Narsing Rao, Aged about 60 years, Occ Business, R/o. H.No.2-35, Somaram Village, Medchal-Malkajgiri District.

...Petitioner

AND

1. P. Sarala, W/o. P.V.Suresh Kumar, Age 55 years, Occ Housewife, R/o. H.No. 6-6-427/1, Gandhi Nagar, Behind CGO Tower, Secunderabad.
2. K. Surya Kumari, W/o. K. Narasing Rao, Age 72 years, Occ Housewife, R/o. H.No.5-1-226/1, Old Ghasmandi, Secunderabad.
3. K. Pandarinath, S/o. Late K. Narasing Rao, Age 54 years, Occ Business, R/o. H.No.5-1-226, Old Ghasmandi, Secunderabad.
4. Vikram Bhandari, S/o. Prakashmal Bandari, Age 39 years, Occ Business, R/o. Plot No. 2, H.No.2-2-129, Sy.No.16, Near Ananthnagar, Rasoolpura, Secunderabad Cantonment.
5. Smt. Devika Bhandari, W/o. Vishal Bhandari, Age 42 years, Occ Business, R/o. Plot No. 2, H.No.2-2-129, Sy.No.16, Near Ananthnagar, Rasoolpura, Secunderabad Cantonment.

...Respondents

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of proceedings in O.S.No.164 of 2018 on the file of XXVII Addl. Chief

Judge, FAC XII Additional Chief Judge, City Civil Court, Secunderabad pending disposal of the CRP.

Counsel for the Petitioner: SRI C.M.R. VELU

Counsel for the Respondent No.1: SRI K. BUCHI BABU

Counsel for the Respondents No.4 & 5: SRI S. BALCHAND

Counsel for the Respondents No.2 & 3: None Appeared

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.NO.418 of 2021

JUDGMENT :

Being aggrieved by the order of learned XXVII Addl. Chief Judge, dated 08-02-2021 in IA.No.364 of 2020 by which the petition filed by the petitioner, who is second defendant in OS.No. 164 of 2018 under Order VII Rule 11 C.P.C. was dismissed by the Court below, the petitioner/2nd defendant filed this Civil Revision Petition under Article 227 of Constitution of India on the following grounds.

2. The trial Court failed to consider that the respondent/plaintiff admitted in the plaint itself that the notice of her demand was never delivered to the defendant and no cause of action arose for filing the suit. The averments made in the plaint filed by the respondents do not disclose a cause of action, therefore, the Court below could have rejected the plaint. There is a clear absence of cause of action, thereby, the Court should not have dismissed the petition filed by the petitioner/defendant No.2 to avoid unnecessary proceedings before the trial Court. The petitioner has claimed that the purpose of

Order VII Rule 11 C.P.C. to ensure that a litigation which is meaningless should not be permitted to waste the time of Court. But the Court below committed a material error by dismissing his application, thereby, sought for setting aside the order impugned and for rejection of the plaint filed before the Court which was registered as OS.No.164 of 2018.

3. Before advertng to the merits of the petition, it is just and necessary to see what was the specific contention of the petitioners herein vide his petition in IA.No.364 of 2020 and what was the contention of the respondents/plaintiffs and as to how the petition was dealt with by the trial Court.

4. According to the copies of affidavit filed by the petitioners herein in support of the IA.No.364 of 2020 and counter therein which are available in the record, it shows that the second defendant in the main suit has contended before the Court below that the averments made by the respondents/plaintiffs in the plaint clearly shows that notice dated 23-08-2008 was addressed to defendants 1 and 2 was not delivered. Therefore, the said statement itself is sufficient to non-suit the plaintiff or no cause of action arose to maintain the suit. The suit filed by the respondents is hopelessly barred by limitation. Suit is bad for non-joinder and

mis-joinder of proper and necessary parties, thereby, sought for rejection of the plaint.

5. However, the respondents/plaintiffs filed a counter stating that cause of action for filing the suit arose on the agreement of sale was on 03-09-2015. The petitioner/defendant No.2 is witnessed the said agreement. There was a Memorandum of Understanding dated 02-08-2017 which was also within the knowledge of the petitioner. A legal notice was addressed to the defendants on 23-08-2017, but as per the track report, the notice was not served on the defendants. However, the respondent/plaintiff filed the suit before the Court below on 31-08-2018 to save the period of limitation. Thereby, the suit is within limitation and it cannot be claimed that there was no notice as required under law.

6. The trial Court having appreciated the above referred averments and after hearing the parties to the suit, came to the conclusion that there are no grounds to reject the plaint and dismissed the petition filed by the petitioner herein under the impugned order.

7. Heard both parties.

8. Now the point for consideration is:

1. Whether the suit filed by the respondents/plaintiff does not disclose cause of action?
2. Whether there was no proper notice as required in a suit filed for specific performance of agreement?
3. Whether there are grounds to reject the plaint as required under Order VII Rule 11 C.P.C. and whether the trial Court committed an error in dismissing the petition filed by the petitioner herein?

9. The record placed before the Court clearly indicates that OS.No.164 of 2018 has been filed by the respondents/plaintiffs for specific performance of agreement of sale. In order to dispose of a petition filed under Order VII Rule 11 C.P.C., the Court has to see and consider the averments made in the plaint, the only averments of the plaint are criteria for disposing such an application and the other contentions or defenses raised by the defendants need not be considered at the time of deciding the petition under Order VII Rule 11 C.P.C. It may be the defense of petitioner, defendant No.2 and other defendants to the suit that the notice said to have been issued by the respondents/plaintiffs was not served on them. It may be a fact that there is an averment in the plaint itself the notice dated 23-08-2017 was not served as evidenced by the track record which was subsequently obtained by the respondents/plaintiffs. In

fact, it was the specific contention of respondents that having issued a legal notice dated 23-05-2017, she filed the suit on 31-08-2017 to save the limitation and subsequently, she realized the non-service of notice. The specific contention of the petitioner about the failure of respondents in issuing notice can be considered or cannot be considered is a ground while disposing the main suit on merits. As already stated for disposal of a petition under Order VII Rule 11 C.P.C., the same cannot be considered. The learned trial Judge while dismissing the petition filed by the petitioner herein made an observation that in view of the settled legal position by which the Court has to see the averments of the plaint for deciding the petition under Order VII Rule 11 C.P.C., there is no necessity to go into the merits of the case. The Court below considered the contentions of both parties and dismissed the petition under the impugned judgment.

10. According to the specific contention of the respondent, she filed a suit within the time of limitation and that too after issuing the required notice. Therefore, absolutely there are no grounds for rejecting the plaint. The contentions raised by the petitioner cannot be taken into consideration for disposal of the petition under Order VII Rule 11 C.P.C, thereby, the petition is

rightly dismissed by the trial Court and the present revision is liable to be dismissed.

11. In the result, the petition is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No costs.

Sd/- V. KAVITHA
ASSISTANT REGISTRAR



//TRUE COPY//

SECTION OFFICER

To,

1. The XXVII Additional Chief Judge, FAC XII Additional Chief Judge, City Civil Court, at Secunderabad.
2. One CC to SRI C.M.R. VELU, Advocate [OPUC]
3. One CC to SRI K. BUCHI BABU, Advocate [OPUC]
4. One CC to SRI S. BALCHAND, Advocate [OPUC]
5. Two CD Copies

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VH

HIGH COURT

DATED:06/09/2023

JUDGMENT

CRP.No.418 of 2021



**DISMISSING OF CIVIL
REVISION PETITION**

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[Signature]
022/12/2023