

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-3499-2021(O&M)

Date of decision: 11.01.2023

M/s SKRD Vet Pvt. Ltd.

...Petitioner(s)

Vs.

Ashok Wadhwa & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Neeraj Gupta, Advocate for the petitioner.

Mr. P.S. Jammu, Advocate for

Mr. Rishi Vohra, Advocate for respondents.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the petitioner/defendant seeking setting aside of order dated 03.12.2021 (Annexure P8) passed by learned Civil Judge (Junior Division), Gurugram vide which application (Annexure P6) filed by the petitioner/defendant under Order 7 Rule 11 of CPC for rejection of the plaint in Civil Suit No.2310/2021 titled as "Ashok Wadhwa & Another Vs. M/s SKRD Vet Pvt. Ltd." has been dismissed.

Brief facts of the case are that the petitioner is engaged in pet-healthcare services and is running pet-clinic in shop/office premises No.DG-51, Ground Floor, Rodeo Drive, Arcadia-II, South City-2, Sector 49, Gurugram, Haryana. The petitioner had taken the said premises on lease from the respondent No.1 at a monthly rent of Rs.35,000/- vide three-year Lease Deed dated 06.10.2018.

As the petitioner found the abovesaid premises insufficient for the clinic, he signed another three-year Lease Deed dated 09.10.2018 with respondent No.2 herein for taking on lease adjoining office/space premises No.DG-50, Ground Floor, Rodeo Drive, Arcadia-II, South City-2, Sector 49, Gurugram, Haryana on a monthly lease rent of Rs.20,000/- (both shops No. 50 and 51 are hereinafter referred to as “the demised premises”). It is the pleaded case of the petitioner that the petitioner invested almost Rs.20-25 lakh for setting up infrastructure and medical equipment in the aforesaid premises to start functioning of his clinic. However, it is stated that the petitioner started facing infrastructural problems soon thereafter as there was no proper drainage and he faced water problems also. It is submitted that the petitioner informed the respondents about these problems telephonically several times, however, the respondents did nothing about the same and only gave false assurances.

It is further stated that due to water and drainage problems in the clinic, there was constant smell of sewerage which made the visitors to the clinic very uncomfortable and therefore, work of the petitioner also suffered though he kept on paying the lease amount to the respondents. It has been stated that despite Covid-19 pandemic, he kept on paying the rent, however, on 02.02.2020, the petitioner telephonically informed the respondents that he was suffering due to poor infrastructure, water and drainage problems in the demised premises which had not been rectified despite frequent requests and therefore, he was not able to pay further rent and maintenance charges till the said problems were resolved. It has further been stated on behalf of the petitioner that he was unable to

vacate the demised premises despite the problems as he had spent a lot of money to set up the clinic and invested a lot of money in maintenance and upkeep of the demised premises.

On 27.03.2021, the petitioner also sent a legal notice to the respondents calling upon them to rectify the problems in said premises so that he could restart the clinic operations and restart payment of monthly rentals.

However, on 22.06.2021, both the respondents herein filed one Suit for recovery of possession, arrears of rent along with consequential relief under Order 39 Rule 2 CPC against the petitioner. The petitioner filed an application dated 30.07.2021 (Annexure P6) under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint on the ground of misjoinder of parties, cause of action, and jurisdiction. Reply to the aforesaid application was filed by the respondents/plaintiffs (Annexure P7) and vide impugned order dated 03.12.2021, learned Civil Judge (Junior Division), Gurugram has dismissed the above said application of the petitioner/defendant. Hence, the present Revision Petition.

It is inter alia, submitted by learned counsel for the petitioner that the petitioner had taken on lease two different properties on different dates belonging to the respondents/different individual owners. It is submitted that therefore, single Suit on behalf of both the respondents was not maintainable, and the respondents ought to have filed two separate Suits, and thus, present Suit is liable to be dismissed for misjoinder of parties as well as cause of action.

It is further submitted that the Suit has been filed before the Commercial Court which has no jurisdiction to entertain the present Suit as, the Suit has been filed for recovery of possession, arrears of rent etc. which does not fall under the category of commercial dispute as defined under Section 2(1)(c) of the Commercial Courts Act, 2015.

It is further submitted that the learned Court below even as no pecuniary jurisdiction to entertain the present Suit as a Commercial Court. It is stated that the specified value of both the leased out disputed properties combined together is about Rs.50,050,40/-, which is beyond the Rs.50 lakh pecuniary jurisdiction of the learned Court below.

It is submitted that the Suit of the respondents is not maintainable also on the ground that respondents were required to file a Suit for ejectment of the petitioner from the leased out property whereas they have filed a Suit for recovery of possession. It is submitted that for this reason also the learned trial Court was in error in dismissing the petitioner's application under Order 7 Rule 11 CPC.

It is further submitted that the impugned order cannot be sustained because the learned trial Court has failed to frame an issue with regard to jurisdiction and without getting any evidence from the parties, the Court could not have dismissed the petitioner's application under Order 7 Rule 11 CPC. It is stated that as the respondents had filed a Civil Suit in a Commercial Court, the petitioner's application under Order 7 Rule 11 CPC could not have been dismissed as the respondents' Suit is not maintainable.

Learned counsel refers to Para 22 of the plaint (Annexure P5) to submit that there is a categoric assertion on part of the respondents/plaintiffs that *“That the present Suit is a “Commercial Dispute” as defined under Section 2(1)(c)(vii) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.”* It is submitted that accordingly, the petitioner had sought rejection of the Suit inter alia, on the ground that the Commercial Court has “no jurisdiction” to entertain the present Suit as the present Suit is not covered under the category of “Commercial Dispute” as defined under Section 2(1)(c) of the Commercial Courts Act, 2015.

It is submitted that no cogent reason has been given by the learned trial Court in dismissing the petitioner’s application under Order 7 Rule 11 CPC.

It is further submitted that even if it is assumed that the dispute is commercial in nature, even then the learned Court below has no pecuniary jurisdiction in the matter and therefore, dismissal of petitioner’s application cannot be sustained.

In response, it is submitted by learned counsel for the respondents that no doubt, the Suit was originally filed before the Commercial Court but the Suit has been taken as, and tried as a Civil Suit, and not as a commercial dispute. It is submitted that the learned Court below is vested with the powers of Civil Judge (Junior Division)/JMJC/RC, and therefore, it is incorrect that there is no jurisdiction with the learned Court below to hear the present case. It is further submitted that even the

matter has been numbered as “Civil Suit” 1860 of 2021, and not as a Commercial Suit. It is submitted that therefore, the petitioner’s objections in respect of jurisdiction deserve to be rejected.

Learned counsel further refers to paras 3 and 4 of Annexure P7, which is the respondents’ reply to the petitioner’s application under Order 7 Rule 11 CPC, to submit that it has been specifically stated therein that as per Notification dated 17.01.2020, the learned Court below also has the pecuniary jurisdiction to try the present Suit. It is submitted that this fact has not been denied by the petitioner.

It is further stated that in the application under Order 7 Rule 11 CPC, the only ground raised by the petitioner is ground of jurisdiction, and, for the reasons stated above, is a misplaced assertion. It is submitted that necessary facts pertaining to the case have not been revealed by the petitioner in his application under Order 7 Rule 11 CPC which is even otherwise not maintainable. There is no provision for rejection/dismissal of the Suit for misjoinder of parties or cause of action and therefore, present application is an abuse of due process of law.

Learned counsel also refers to clause 5 sub-clause (b) of the Lease Deed dated 09.10.2018 (Annexure P2). As per said clause, the petitioner had sought permission and had been permitted to remove the common wall between the two shops with undertaking that at the time of vacating the premises, the petitioner will restore the common wall between the two shops at his own cost. It is submitted that therefore, it is not open to the petitioner to raise objections that a common Suit could not

have been filed by the respondents. It is submitted that in view of the above stated fact, the Suit of the respondents is maintainable, even as per Order 1 Rule 1 and Order 2 Rule 3 CPC.

It is further submitted that the respondents would have filed an ejectment petition before the learned Rent Controller but under Section 1(3) of the Haryana Rent Control Act, it has been stipulated as under:-

“Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.”

It is further stated that even on merits, the petitioner has no case as admittedly, he has been occupying the demised premises for at least three years without paying rent. Moreover, the petitioner is presently occupying the demised premises/both the suit properties as a joint property and hence, respondents have a joint cause of action against the petitioner.

In support of his contentions, learned counsel for the respondents refer to judgment of this Court passed in ***CWP No.21730 of 2012 titled as “Panchkula Commercial Tenants Welfare Association, Panchkula, Haryana Vs. State of Haryana and Others”***.

In rebuttal, it is submitted by learned counsel for the petitioner that there is no order on file of the learned Court below that the present proceeding will be treated as a Civil Suit and even there is no finding to this effect. It is reiterated that the petitioner had taken on lease two separate premises on two different dates from two different persons by way of two separate lease deeds. It is submitted that clause 5(b) as referred to above,

is contained only in lease deed dated 09.10.2018 and not in lease deed dated 06.10.2018.

No other submission is made on behalf of the parties.

I have heard learned counsel for the parties.

A perusal of the impugned order shows that there is no doubt that learned Civil Judge (Senior Division), Gurugram Court has been designated as a Commercial Court, however, said Court has also been conferred with the powers of a Civil Judge (Junior Division), as also a Judicial Magistrate (First Class), as also a Rent Controller. Accordingly, the learned Court below hears various kinds of disputes in its different capacities. Needless to say, in the present case, the learned Court below is hearing the present dispute in its capacity as a Civil Judge (Junior Division), as also evident from the fact that the present proceedings have been numbered as a Civil Suit and not as a commercial dispute/petition. Therefore, this argument on behalf of the petitioner is rejected.

As regards petitioner's submission regarding pecuniary jurisdiction, reference may be made to reply of the respondents to the petitioner's application under Order 7 Rule 11 CPC, where under the heading of "Reply to Specific Submissions", it is stated in Para 3 and 4 as below:-

*"3. The contents of the para 3 of the present application are wrong and denied. It is submitted the issues involved in the present Suit are well within the pecuniary and territorial jurisdiction of this Hon'ble Court and even otherwise according to the notification dated **17.01.2020 bearing No.S.O.8/C.A. 4/2016/S.3/2020** issued by the Haryana Government this Hon'ble Court is conferred with the powers to try the*

present suits related to commercial transactions having a value of Rs.3 Lakhs to 50 Lakhs. Thus, in the light of submissions made hereinabove the present application is liable to be dismissed.

4. The contents of the para 4 of the application are wrong and denied. It is submitted that the Defendant is in unauthorized possession of the Suit Properties without the payment of any rent from February 2020. It is further submitted that the Plaintiffs are fully eligible to recover the peaceful and vacant possession on the Suit Properties immediately. It is further submitted the Suit Properties are of commercial nature and construction of the same are not 10(ten) years old, hence the provisions of Haryana Urban Control of Rent and Eviction Act, 1973 are not applicable to the present matter.”

Perusal of the above pleadings shows that the learned Court below has been conferred with the pecuniary jurisdiction too, to try the present Suit. Moreover, the petitioner has not denied this fact and even no replication has been filed by the petitioner to this reply. Thus, argument of the petitioner regarding lack of pecuniary jurisdiction also does not stand scrutiny.

As regards petitioner’s argument regarding misjoinder of parties and misjoinder of cause of action, in my view, the said argument too is misplaced as, as noticed above, it has not been denied by the petitioner that the two shops comprising the demised premises have been merged and converted into one shop by the petitioner. Reference was made by learned counsel for the respondents to Clause 5 sub-clause (b) of the Lease Deed (Annexure P2) dated 09.10.2018 which is reproduced hereinbelow:-

“That the Lessee will be allowed by Lessor to remove the common wall between Shop No.Dg-50 and Dg-51 at the cost of Lessee. The permission for common wall removal, from shop Dg-51 owner will be taken by Lessee alone. At the time of vacating the premise, lessee will

restore the common wall between shop no.Dg-50 and Dg-51 at his own cost.”

From a perusal of the above it is crystal clear that the petitioner is using the demised premises as one unit. The petitioner has not denied that bifurcation/partition of wall between the two premises has been removed by him and the entire place is being used as one premise by the petitioner. Accordingly, I find merit in the argument on behalf of the respondents that as the demised premises are being used as one single unit, therefore, a common Suit would be maintainable in respect of the demised premises.

Application of the petitioner is also liable to be rejected in view of the provisions of Order 1 Rule 1 CPC and Order 2 Rule 3 CPC. The said provisions are reproduced hereinbelow for ready reference:

Order 1 Rule 1 CPC is as follows:-

“1. Who may be joined as plaintiffs. – All persons may be joined in one suit as plaintiffs where –

(a) any right to relief in respect to, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.”

Order 2 Rule 3 of CPC is as follows:-

“3. Joinder of causes of action.- (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested

against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

Therefore, a conjoint reading of the above said provisions shows that under Order 2 Rule 3 CPC, a common Suit may be filed if there are same defendants; and under Order 1 Rule 1 CPC, if questions of law and facts are similar, then a common Suit may be filed. It is thus, permitted under law to join parties as plaintiffs in the above eventualities. It is clear that in the present case the petitioner is the one common defendant; and the questions of law and facts being similar in the present case, a common Suit would be maintainable. Even otherwise, in order to avoid multiplicity of pleadings, the respondents have preferred a composite/combined Suit.

Lastly but not the least, in an application for rejection of plaint under Order 7 Rule 11, only the contents of the plaint are to be seen. In the present case, as per the petitioner himself, as mentioned in ground ‘F’ of the present petition, prayer has been made to frame an issue with regard to jurisdiction and getting evidence from the parties. Therefore, application of the petitioner was misconceived for this reason as well.

Further, it has not been denied by the petitioner that he is in possession of the demised premises, and has admittedly not paid rent since February, 2020.

Accordingly, for the reasons stated hereinabove, I find no merit in the present Revision Petition and the same is hereby, dismissed.

Pending application(s) if any also stand(s) disposed of.

11.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No