

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 137 of 2023

Kalipada Manna

Vs.

Ashis Bhuniya & Ors.

For the petitioner	:Mr. Aniruddha Chatterjee, Adv. Mr. Subhas Jana, Adv. Mr. Iftekar Munsif, Adv.
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For the Opposite Party 1 & 2	:Mr. Jishnu Saha, Sr. Adv. Mr. Subhojit Saha, Adv. Mr. Agniswar Bhuniya, Adv.
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For the respondent nos. 3 to 25	:Mr. Debducta Basu, Adv.
Except respondent nos. 4,12,15 & 17	Mr. Arun Kumar Das, Adv.

Heard On	:14.03.2023, 29.03.2023, 19.04.2023, 12.05.2023, 03.08.2023, 14.08.2023, 21.08.2023, 23.08.2023, 30.08.2023, 22.09.2023, 06.10.2023, 11.10.2023,
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23.11.2023,18.12.2023,
05.01.2024, 10.01.2024,
08.02.2024,12.03.2024,
20.03.2024, 23.04.2024,
24.05.2024, 11.06.2024,
19.06.2024, 20.06.2024.

Judgment On : 09.07.2024

Bibhas Ranjan De, J. :

1. Challenge of this revision application is the order dated 22.12.2022 passed by the Ld. Judge, Commercial Court, Alipore in connection with I.A. 24 of 2022 corresponding to Title suit no. 20 of 2021 wherein the claim of defendant no. 24/ petitioner herein for rejection of plaint invoking the provision of Order VII Rule 11 of the Code of Civil Procedure (for short CPC) was refused. Being aggrieved by and dissatisfied with the said order the petitioner has preferred the present civil application under Section 227 of the Constitution of India.

Background Facts:-

2. The opposite party nos. 1 & 2 herein being the plaintiffs jointly filed the Title Suit being no. 20 of 2021 for declaration, recovery of possession of the suit property along with claim of money and damages together with permanent injunction in the Court of the Ld. Commercial Judge, Alipore against opposite party nos. 3 to 25 herein as well as defendant nos. 1 to 23 therein including the revisionist herein as well as the defendant no. 24 therein specifically on the ground that the plaintiffs by the virtue of 23 registered deeds of lease executed by defendants nos. 1 to 23 therein acquired the lease hold right and interest over the suit property. Those said deeds were executed and registered on 25.04.2008. During that relevant point of time the nature of the suit property was 'Jal Jami'/waterbody. Subsequently, the plaintiffs therein/opposite party nos. 1 & 2 herein constructed the brick field under the name and style of 'Dream Bricks Industries' along with appropriate structures and machineries for the functioning of the said brick field.

2.1. But, in the year of 2013 vide agreement dated 18.04.2013 the said brick field business was transferred

to the defendant no. 24 therein / revisionist herein where after some time dispute and difference cropped up between the plaintiffs and defendant no. 24 therein over the issue of alleged breach of the terms of the agreement mentioned above, especially non-compliance of the payment as per schedule. As a result, the impugned Title Suit was preferred with prayer for reliefs already mentioned hereinabove.

Argument Advanced:-

3. Ld. Counsel, Mr. Aniruddha Chatterjee, appearing on behalf of the petitioner has advanced his arguments on the ground :-

- The Commercial Court adjudicating the Title Suit actually has no jurisdiction over the present dispute because the suit property is 'Jal Jami' and it was not used exclusively for trade or commerce within the meaning of Section 2(1) (c) of the Commercial Courts Act, 2015.
- From the averments of the plaint it is apparent that the initial lease was granted for a period of 9 years with effect from 25.04.2009 and with validity up to 24.04.2018. Therefore, that particular lease has already expired and in addition to that Mr. Chatterjee has contended that no

documents has been produced on behalf of the plaintiffs to show whether the lease period was either extended or a new fresh deed was executed between the original owner of the schedule property and the plaintiff. The impugned Title Suit was filed only on 2021 i.e more than 4 years of expiry of the original leasehold agreement. In continuation of that argument it was further submitted that lease deed of 2013 was challenged in this suit which was filed in the year 2021 i.e. beyond the period of limitation of 3 years.

- The provision envisaged in Section 12A of the Commercial Courts Act, 2015 has not been complied with by filing the suit without making any endeavour for pre institution mediation as per rules prescribed therefor.
- Before parting with, Mr. Chatterjee has submitted that the plaintiffs/ opposite party nos. 1 & 2 filed the Title Suit only on the basis of their alleged leasehold interest in the suit property and it is squarely based on certain statutory rights under the Transfer of Property Act which at best can be mitigated before a Civil Court and not by the Commercial Court. As a sequel, the impugned order is liable to be quashed.

3.1. In support of his contention, Mr. Chatterjee has relied on the following cases which stand as follows:-

- ***Ambalal Sarabhai Enterprises Limited vs. K. S. Infraspacellp and another reported in (2020) 15 Supreme Court Cases 585***
- ***Deepak Polymers Private Limited vs. Anchor investments Private Limited in C.O. No. 759 of 2021***
- ***Jaspal Singh Chandhok and others vs. Sandeep Poddar and another reported in 2023 SCC OnLine Cal 361***
- ***C. Natarajan vs. Ashim bai & Anr. reported in AIR 2008 Supreme Court 363***
- ***Hardesh Ores (P) Ltd. Vs. Hede and Company & Sociedade De Fomento Industrial (P) Ltd. Vs. Hede and Company reported in (2007) 5 Supreme Court Cases 614***
- ***Dahiben vs. Arvindbhai Kalyanji Bhanusali ((Gajra) dead through legal representatives and others reported in (2020) 7 Supreme Court Cases 366***
- ***Raghwendra Sharan Singh vs. Ram Prasanna Singh (dead) by Lrs. reported in AIR 2019 Supreme Court 1430***

- ***P. Subramaniam vs. union of India and others*** reported in ***AIR 2019 Supreme Court 1438***
- ***Laxmi Polyfab pvt. Ltd. Vs. Eden Realty Ventures Pvt. Ltd. And another*** reported in ***AIROnline 2021 Cal 278***
- ***Prabha Surana vs. jaideep Halwasiya*** reported in ***AIROnline 2021 Cal 347Patil Automation Private Limited and others vs. Rakheja Engineers private Limited*** reported in ***(2022) 10 Supreme Court Cases 1***

4. Ld. Sr. Counsel, Mr. Jishnu Saha, appearing on behalf of the opposite party no. 1 & 2 has mainly focused his argument which can be summarized as follows:-

- As per Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015 ‘commercial dispute’ means ‘a dispute arising out of agreement relating to immovable property used exclusively in trade or commerce.’ In support of his contention Mr. Saha has relied on a case of ***Ambalal Sarabhai Enterprises Limited*** (supra) wherein the Hon’ble Apex Court has held that the word used ‘occurring in’ Section 2 (1) (c) (vii) denotes actual use and that it must appear from records that at the time when the concerned agreement was entered into, the property was being exclusively used in

trade and commerce. In the instant case the agreement dated 08.04.2013 shows that the suit property and the structures standing thereon were on the date of such agreement being actually and exclusively used for commercial purpose. Therefore, Mr. Saha has duly supported the impugned order passed by the Commercial Court, Alipore.

- There arises no question of title suit being barred as there is no averment in the plaint with regard to the suit property or any portion thereof being 'Jal Jami'. So the question of whether suit property was actually 'Jal Jami' or not, if at all raised, is an issue in the suit that can only be determined during the course of trial.
- Now coming to the contention of the revisionist with regard to the suit being a civil dispute, the Commercial Courts are also Civil Courts and also have the power to conduct trials of matters identical to the case at hand.

4.1. In support of his contention, Mr. Saha has placed his reliance on the following cases:-

- ***Kamala and others vs. K. T. Eshwara Saand others reported in (2008) 12 Supreme Court Cases 661***

- ***Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner reported in (2004) 3 Supreme Court Cases 137***
- ***Liverpool & London S.P. & I Association Ltd. Vs. M. V. Sea Success I and another reported in (2004) 9 Supreme Court Cases 512***

5. Ld. Counsel, Mr. Debdutta Basu, appearing on behalf of the respondent nos. 3 to 25 except respondent nos. 4,12,15 & 17 has virtually supported the points raised by the revisionist and advanced his argument mainly on the point of maintainability of the proceeding initiated by the opposite party no. 1 & 2 herein before the Commercial Court Alipore. With regard to maintainability Mr. Basu has highlighted some points which are as follows:-

- The suit property is an agricultural land in question and the business of manufacturing of bricks are being carried on the said land through some machineries which are mostly movable properties and not mentioned particularly in the description of suit property. The plaintiff's argument that the suit is not in respect of the landed property but regarding the transfer of business only is baseless since the

business of brick manufacturing is non-existent without the land i.e the suit property.

- Therefore, as the suit property was not being exclusively used in trade or commerce on the date of lease deeds between the plaintiff no. 1 & defendant nos. 1 to 23/ the land owners, the plaint is liable to be rejected.
- Before parting with, Mr. Basu has also placed his reliance on ***Ambalal Sarabhai Enterprises Limited*** (supra) wherein Hon'ble Apex Court while defining 'commercial dispute' as provided in the said act made it clear that 'for the purpose of Commercial Courts jurisdiction the nature of immovable property is to be exclusively used for trade/ commerce as on the date of the agreement', but in the present case the suit property as on date are in the nature of agricultural land as per Record of Rights. Thus, the dispute between the parties to the present suit should be tried under the provisions of the Transfer of Property Act and not under Commercial Courts Act.

5.1. In support of his contention, Mr. Basu has also taken assistance of following cases:-

- ***Dahiben vs. Arvindbhai Kalyanji Bhanusali ((Gajra) dead through legal representatives and others reported in (2020) 7 Supreme Court Cases 366***
- ***Deepak Polymers Private Limited vs. Anchor investments Private Limited in C.O. No. 759 of 2021***
- ***Jaspal Singh Chandhok and others vs. Sandeep Poddar and another reported in 2023 SCC OnLine Cal 361***

Main issues for consideration:-

6. After careful perusal of the arguments advanced on behalf of both the parties three main points of consideration have arisen which are to be determined for adjudication. These three points are as follows:-

- Whether the suit preferred by the opposite party no. 1 & 2 herein before the Commercial Court is sustainable in the eye of law or not with respect to the present dispute.
- Whether that very suit is barred by limitation or not.
- Whether the nature of the subject property of this suit can be a matter of determination by the Commercial Court.

Analysis:-

7. Before delving into the merit of the case at hand first, I would like to discuss about the ratio of the cases relied on behalf of the parties for brevity of discussion.
8. The cases relied on behalf of the petitioner mainly canvassed on the following ratios: -
 - Mainly because the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.
 - Whether a land is an agricultural land or not is essentially a question of fact which has to be answered after consideration of all the relevant factors.
 - A dispute can only be determined by the cause of action of the suit and not the preceding backdrop. Even, Section 106 of the Transfer of Property Act deals with termination of the jural relationship of lessor and lessee, pre supposing a prior lease agreement, the bundle of facts comprising the cause of action of the suit is the sole determinant of the 'dispute' involved in the suit.
 - An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and

taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose only the averments made in the plaint are relevant. At this stage, the Court would not be entitled to consider the case of the defence.

- The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from statement in the plaint to be barred by any law.
- It is well settled that whether a plaint discloses a cause of action 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 whether the averments made in the plaint, if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is

not permissible to cull out a sentence or a passage and to read it out of the context in isolation.

- 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 suit, the Court would be justified in exercising the power under Order 7 Rule 11 CPC. However, if by clever drafting of the plaint an illusion of a cause of action is created then it should be nipped in the bud, so that bogus litigation will end at the earliest.
- A plaint can be rejected in exercise of power under Order 7 Rule 11 (d) CPC if the averments in the plaint clearly show that the suit is barred by law of limitation.
- Section 12 A (1) of the Commercial Courts Act has debarred a plaintiff from instituting a suit relating to a commercial dispute without exhausting the remedy of pre-institution mediation, unless the plaintiff seeks urgent relief.

9. Now coming to the cases relied on behalf of the opposite party no. 1 & 2/ plaintiffs, they have tried to focus on the following points:-

- The question of law of limitation is essentially a mixed question of law and facts which can be decided only after

the parties lead the evidence which is a matter of trial. Therefore, a suit cannot be rejected by exercise of power under Order 7 Rule 11 of CPC.

- The basic question to be decided while dealing with an application filed under Order 7 Rule 11 (a) CPC is whether a real cause of action has been set out in the plaint or something illusory has been stated with a view to get around Order 7 Rule 11.
- In ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful or complicated question of law or fact by the statute the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown. The Court need not see whether the claim made by the petitioner is likely to succeed or not. It has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting the relief he claims, no cause of action is shown then that petition is to be rejected.

- 10.** Finally coming to the cases relied on behalf of the opposite party no. 3 to 25, which have already been referred by the petitioner/revisionist, need not be discussed again as the ratio of those cases have been stated above.

Issue no. 1 - Whether the suit preferred by the opposite party no. 1 & 2 herein before the Commercial Court is sustainable in the eye of law or not with respect to the present dispute

- 11.** Now coming to the first contentious issue i.e. the maintainability of the suit preferred by the opposite party no. 1 & 2 herein before a Commercial Court and the interlocutory application filed invoking Order VII Rule 11 of CPC especially Sub Clause (d) by the revisionist herein which was rejected by the Trial Court, I think it would be profitable to refer the provision of Order VII Rule 11(d) of CPC first which provides that the plaint shall be rejected “where the suit appears from the statement made in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application under Order 7 Rule 11 CPC must have due regard only to the statements

made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

12. In ***Kamala (supra)*** The Hon'ble Apex Court examined the ambit of Order VII Rule 11(d) CPC and observed :-

“ 21. Order 7, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.”

13. The Hon'ble Apex Court in a catena of decisions has summarized the legal position pertaining to the said provision as follows:—

“ The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

14. From the aforesaid consistent decisions of the Hon'ble Apex Court in adjudicating plaint under Order VII Rule 11 of CPC it can be summarized that rejection of the plaint is a drastic power conferred in the Court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII Rule 11 CPC, therefore, are stringent. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII Rule 11 CPC, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other situations the claims will have to be adjudicated in the course of trial.

15. In the present case, from reading of the Original Application as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do so, it cannot be said that the said pleadings *ex facie* disclose that the suit is barred by any law as the dispute

mainly cropped up because of non-compliance of specific terms and conditions prescribed in the deed of transfer dated 18.04.2013 between the opposite party no. 1 & 2 herein and the revisionist. In this context, it would be pertinent to refer the case of **Ambalal** (supra) wherein the Hon'ble Apex Court held that the disputes arising out of the agreements relating to immovable property used exclusively in trade or commerce on the date of said agreement would be within the purview of adjudication of the Commercial Court. In the case at hand, the plea of the revisionist as well as opposite party no. 3 to 25 that the subject land would not come under the purview of Commercial Act as during the initial deed of transfer the subject land was not used for commercial purpose and it was just a water body would not suffice as the subsequent deed of transfer in the year 2013 clearly shows that at that relevant point of time there was a brick field and possession of the same along with the land was given as a lease to the revisionist and there was clear commercial activity on the subject land. The dispute that arose which gave rise to the impugned proceeding was mainly because of mismatch in profit of shares and accounts from the said business arising out of the brick

field. As a sequel, I do not find any infirmity or irregularity in the order impugned with regard to the sustainability of the said suit before the Commercial Court as per the provision of Section 2 (1) (vii) of The Commercial Courts Act, 2015.

Issue no. 2 – whether the preferred suit is barred by limitation.

- 16.** Now coming to the next issue pertaining to the question of limitation, the argument advanced on behalf of the revisionist as well as the opposite party nos. 3 to 25 was that the suit filed by the opposite party no. 1 & 2 before the Commercial Court was barred by limitation as it was filed after the statutory period as prescribed under the specific law. In ***Dahiben*** (supra) the suit was filed after over 5 and ½ years of cause of action which clearly made that suit barred by limitation. But, that case does not necessarily match with the factual position of the case at hand as it is pleaded by the plaintiff that alleged cause of action arose only after the expiry of 15 days from date of service of the notice dated 23.03.2021 given by the plaintiff no. 1 to the revisionist herein. Thereafter, on 16.07.2021 when the plaintiff no. 1 therein received a

frivolous reply from the revisionist as against to the notice dated 23.03.2021 with regard to the suit property the opposite party no. 1 & 2 herein filed that instant suit and according to them that suit is not barred by limitation.

17. Moreover, the opposite party no. 1 & 2 herein have conceded that nowhere in the plaint there is any indication that the deed of 2013 was ever challenged by them as argued by the revisionist. The whole dispute cropped up mainly because of violation of the terms and agreement of the said deed between the revisionist and the opposite party no. 1 & 2 herein with regard to misappropriation of huge sum of money by the revisionist with the assistance of assets and properties of the opposite party no. 1 & 2 herein appertaining to the suit property.

18. It is settled that question of limitation is generally a mixed question of law and fact. The Hon'ble Apex Court in a plethora of decisions while dealing with the issue of limitation has held that a plea of limitation cannot be decided as an abstract principle of law divorced from facts, as in every case, the starting point of limitation has to be ascertained which is entirely a question of fact to be determined during extensive

course of trial by properly evaluating the evidence led by the parties.

- 19.** In the aforesaid view of the matter, so far as the contention raised by learned counsel for the petitioner that the suit itself was filed after a lapse of more than 9 years and the opposite party no. 1 never acknowledged the claim against revisionist during this period and also other submissions made by the petitioner cannot be looked into at the stage of considering the provisions of Order VII Rule 11(d) of CPC. The question of limitation cannot be answered with conviction at this stage of the proceeding without evaluating the entire evidence thereon. This question has to be kept open for proper adjudication by the Trial Court later on during trial in accordance with the relevant provision of law after taking into account the entire necessary evidence.

Issue no. 3 – Whether the nature of the subject property of this suit can be a matter of determination by the Commercial Court.

- 20.** This issue is interlinked with issue no. 1 which has already been discussed hereinabove. At the risk of repetition I

would like to reiterate that the impugned suit arose out of the agreement dated 18.04.2013 between the opposite party no. 1 & 2 herein and the revisionist mainly due to non-compliance of specific terms and conditions of the aforesaid agreement by the revisionist later on. Therefore, plea taken by the revisionist on the point of nature of land or conversion thereof can only be the subject matter of trial but not of an application under Order VII Rule 11 of CPC.

- 21.** In the aforesaid view of the matter, I find neither any irregularity or illegality in the order impugned.
- 22.** Thus, the instant revision application being no. C.O. 137 of 2023 stands dismissed. No order as to costs.
- 23.** Ld. Judge, Commercial Court is requested to proceed with the suit and dispose of the same as expeditiously as possible in accordance with law.
- 24.** Interim order, if there be any, stands vacated.
- 25.** Connected applications, if there be any, stand disposed of accordingly.

26. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

27. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]