

06.02.2024
Court No. 19
Item No.18
CP/GB

C.O. No. 4534 of 2023

Anil Bhargava
Vs.
Subrata Banerjee & Anr.

Mr. Debabrata Saha Ray
Mr. Neil Basu
Mr. Rahul Kumar Singh
Mr. Sankha Biswas

.....for the petitioner.

1. The order dated November 24, 2023, passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Title Suit No. 366 of 2022 is under challenge before this court. By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure. The court was of the view that the question of the suit being barred by limitation would not arise in this case as the suit had been filed within the period of limitation, upon granting the exemption as per the decision of the Hon'ble Apex Court from March 15, 2020 to February 28, 2022.
2. Mr. Saha Ray, learned advocate appearing on behalf of the petitioner, submits that the cause of action arose on February 9, 2018 and the

period of limitation expired before the covid pandemic hit the country.

3. The learned court did not take into consideration the other grounds on which the rejection was sought for. The averment/objection that the petitioner was appointed as the Secretary of the Bengal Taekwondo Association and such decision was taken by an Hon'ble retired Judge of the Delhi High Court was not dealt with in the order. Learned Advocate further submits that the order impugned suffers from non-application of mind and non-consideration of the grounds on which the application for rejection of the plaint was filed. Referring to paragraph 12 of the plaint, Mr. Saha Roy has submitted that the specific case of the plaintiff was based on the letter dated February 9, 2018, which was issued to the defendant/petitioner, asking the petitioner to hand over all the official documents, cheque book, pass book, audited accounts, cash book of the society, etc. As the defendant failed to do so, the suit was filed. Such averment would not constitute a cause of action.

4. It is next submitted that the order of the Delhi High Court, upholding the election of the petitioner as the secretary of the association, had been suppressed in the plaint. In view of such suppression as well, the plaint should be rejected at the threshold.
5. Having considered Mr. Saha Roy's contention, this Court finds that the suit for declaration and injunction had been filed on August 3, 2022. Even if Mr. Saha Roy's contention that the cause of action arose on February 9, 2018 is taken to be correct, the suit does not, prima facie, appear to be barred by limitation. The declaration sought for was that the conduct of the defendant by representing himself as the association, was illegal.
6. The plaintiff claimed to be the secretary of the association on the basis of the decision of a committee which was formed on mutual consent/selection, dated April 2, 2017.
7. The next contention of the plaintiff was that the defendant acted illegally, by representing himself as the secretary of the society, despite the fact that the Association had been given an affiliation certificate, in which the plaintiff had

been mentioned as the secretary of the Association.

8. In the written statement, it had been mentioned that the election was held as per the directions of the Delhi High Court. However, the contentions of the defendant/petitioner in the written statement, cannot be looked into at the stage of deciding whether the plaint should be rejected at the very inception. The plaintiff, claiming to be the secretary of the Association, filed the suit for a declaration that the action of the defendant in representing himself as the secretary of the Association, was illegal. The plaintiff had averred in several paragraphs as to how the plaintiff was recognized as the secretary of the Association. The decisions and resolutions taken in the core committee meetings had been elaborated. The plaintiff claimed that the members, mutually agreed to elect the plaintiff as secretary. Refusal on the part of the defendant/petitioner to allow the plaintiff to function as the secretary by handing over all the books, cheque books, documents, etc., was pleaded as the cause of action. Secondly, the cause of action in

paragraph 16 of the plaint had been pleaded in further detail.

9. The said paragraph is quoted below for convenience:-

“16. The cause of action to institute the instant suit has arouse on 09.02.2018 when the plaintiff by letter dated 09.02.2018 had requested the defendant to hand over all official documents, cheque book, pass books, audited accounts cash book, society registration certificate and all other documents related to the said society but the Plaintiff till date had not handed over the aforesaid official documents and bank documents of the said society. The cause of action of the instant suit further arouse on 31.03.2022 when Taekwondo Federation of India by issuing Affiliation certificate dated 31.03.2022 had certified the fact that the Plaintiff is the Secretary of the said society. The cause of action of the instant suit is a continuing one. No part of the claim of the present suit is barred by the Laws of Limitation. The Defendant is having its office at 71/1, Canal Circular Road, P.S.: Phoolbagan, Kolkata-700054, which is within the jurisdiction of this Learned Court.”

Under such circumstances, this Court does not find that this is a case where the plaint should be rejected and the litigation should be ‘nipped at the bud’. The Court does not find the plaint is a product

of 'clever drafting' to create an "illusion of cause of action". Reference is made to the decision of the Hon'ble Apex Court in the matter of ***G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.*** decided in ***Civil Appeal No.- 2737 of 2023***. The Hon'ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that

the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

In the decision of ***Jageshwari Devi and ors. vs. Shatrughan Ram*** reported in **(2007) 15 SCC 52**, the Hon’ble Apex Court held as follows:-

“3. We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 CPC no exception can be taken to the order.”

10. The order impugned is upheld. The reasons which are lacking in the order, has been supplied by this Court. The observations made herein shall not affect the trial. The observations are made only for the purpose of disposal of the revisional application.

11. The revisional application is, thus, disposed of.

12. There shall be no order as to costs.

13. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)