IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

GA No. 2 of 2023

In

CS (COM) 341 of 2024

(Old No. CS 17 of 2022)

Ashika Global Securities Pvt. Ltd.

Versus

Rita Kedia

Mr. Sourojit Dasgupta
Mr. Aniket Chaudhary

… for the plaintiff.

Mr. Reetobroto Kumar Mitra
Mr. Rudrajit Sarkar
Mr. Debangshu Dinda
Mr. Rabindra Mitra
Ms. Arundhati Barman Roy
Mr. Tamoghna Saha
Ms. Vanshika Newar
Ms. Vrinda Kedia

… for the defendant.

Hearing Concluded On : 19.08.2024

Judgment on : 20.09.2024

Krishna Rao, J.:

1. The defendant has filed the present applications being GA No. 2 of 2023 for revocation of leave granted under Clause 12 of the Letters Patent Act, 1865 and for rejection of CS-COM 341 of 2024 (Old No. CS. 17 of 2022) (Ashika Global Securities Private Limited –vs- Rita Kedia).

2. The defendant has filed G.A. No. 2 of 2023 for revocation of leave on the ground that the suit filed by the plaintiff is not a commercial dispute. The contention of the defendant is that each and every commercial dispute pending before the High Court or Civil Court cannot be considered as commercial dispute unless such dispute comes within the purview of definition of commercial dispute as per Section 2(1)(c) of the Commercial Courts Act, 2015.

3. The defendant says that the document relied by the plaintiff on the basis of which the loan was given to the defendant has not mentioned whether it was a simple loan or during the business transaction. The defendant says that merely because the plaintiff is a Non-Banking Financial Company, any dispute between the parties cannot be said to be a commercial dispute within the definition of Section 2(1)(c) of the Commercial Courts Act, 2015.

4. The defendant says that no amount has been taken by the defendant from the plaintiff during business transaction. He submits that the alleged transaction does not fall under the provisions of commercial dispute as per the Commercial Courts Act, 2015.

5. The defendant says that no part of the cause of action had arisen within the jurisdiction of this Court. He submits that the plaintiff has failed to disclose any document to say that the defendant has agreed to pay any amount to HDFC Bank, Stephen House Branch, Kolkata.

6. The defendant says that admittedly the defendant resides at Mumbai, Maharashtra but the plaintiff has chosen to file the instant case at Kolkata only to harass the defendant.

7. Plaintiff says that in paragraph 1 of the plaint, it is categorically mentioned that the plaintiff is a Non-Banking Financial Institution and the loan granted to the defendant to be repaid by the defendant with interest at the rate of 12% per annum.

8. The plaintiff says that the defendant has issued a Statement of Confirmation of Accounts in favour of the plaintiff admitting his liability of Rs.15,00,000/- as on 31st March, 2018. The plaintiff says that issuance of Balance Confirmation is a mercantile document within the meaning of Commercial Courts Act, 2015. The plaintiff has relied upon the judgment in the case of ***Venkatesh Vincom Pvt. Ltd. vs. Spice of Joy, Multicousin Restaurant cum Bar & Ors.*** reported in ***2022 SCC OnLine Cal 3010*** and submitted that the dispute between the parties is clearly a commercial dispute and any money given on loan by a Non-

Banking Financial Corporation, the component of interest being agreed between the parties itself make the commercial transaction.

9. As regard to the cause of action, the plaintiff says that it is the specific case of the plaintiff that the defendant had agreed to repay the loan amount with interest at the Bank Account of the plaintiff maintained with the HDFC Bank, Stephen House Branch, Kolkata which is within the jurisdiction of this Court.

10. The plaintiff says that the place of repayment of loan is one of the most essential terms of the agreement between the parties. He submits that the defendant failed to repay the amount to the plaintiff at the said bank account and thus a part of cause of action arose within the jurisdiction of this Court.

11. The plaintiff says that the cause of action is a bundle of facts which is to be proved by the plaintiff during the trial and on the basis of an application, the cause of action cannot be decided.

12. Heard the Learned Counsel for the respective parties, perused the materials on record. In G.A. No. 2 of 2023, the defendant has prayed for revocation of leave granted under Clause 12 of the Letters Patent, 1865 on the ground that no cause of action arose within the jurisdiction of this Court and the suit is not of commercial in nature.

13. The plaintiff filed the suit before the Commercial Division on the pretext that the plaintiff is a Non-Banking Financial Institution engaged in the business of granting loans and advances to various entities and the defendant has also approached for a short term loan of Rs.15,00,000/- and as per discussion, the defendant has agreed to pay the said amount at the rate of 12% interest per annum. In paragraph 4 of the plaint, it is stated that the plaintiff has initially transferred an amount of Rs. 15,00,000/- on 5th July, 2017 from its bank account maintained with the HDFC Bank, Stephen House Branch, Kolkata which is situated within the jurisdiction of this Court.

14. In paragraph 15 of the plaint, the plaintiff also mentioned that the defendant required to make payment of his outstanding dues to the plaintiff's bank account maintained with the HDFC Bank, Stephen House Branch, Kolkata within the jurisdiction of this Court.

15. Under Order VII, Rule 11 of the Code of Civil Procedure, 1908, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII, Rule 11 of the Code would be on consideration of the principles laid down by the Hon'ble Supreme Court in the case of ***T. Arivandandam v. T. V. Satyapal and Another*** reported in ***(1977) 4 SCC 467***, the Hon'ble Court has held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC taking care to see that the ground mentioned therein is fulfilled. In ***Roop Lal Sathi v. Nachhattar Singh Gill*** reported in ***(1982) 3 SCC 487***, the Hon'ble Supreme Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII, Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII, Rule 11(a) of the Code of Civil Procedure, 1908 for striking down certain paragraphs nor the High Court could act under Order VI, Rule 16 to strike out the paragraphs in absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In ***ITC Ltd. v. Debts Recovery Appellate Tribunal & Ors.*** reported in ***(1998) 2 SCC 70***, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order VII, Rule 11 of the CPC is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In ***Saleem Bhai and Others v. State of Maharashtra and Others*** reported in ***(2003) 1 SCC 557***, the Hon'ble Supreme Court has held that the trial court can exercise its powers under Order VII Rule 11 of the CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In ***Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510***, the Hon'ble Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words : "There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities".

16. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the CPC. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.

17. After going through the entire plaint particularly paragraphs 4 and 15 of the plaint, this Court finds that cause of action also arose within the jurisdiction of this Court.

18. The defendant raised the point that the impugned transaction does not fall under the ambit of Commercial dispute as per the Commercial Courts Act, 2015. It is not denied that the plaintiff is the Non-Banking Financial Institution. As per the case of the plaintiff, the plaintiff has lent and advance the loan amount of Rs. 15,00,000/- carrying interest of 12% per annum to the defendant. The defendant has also issued Confirmation of Accounts acknowledging the amount of Rs. 15,00,000/- as on 31st March, 2018.

19. In the plaint, there is no averment to say why the defendant has borrowed the amount from the plaintiff. The plaintiff has only mentioned that the defendant has utilized the said amount and has reaped the benefits thereof. It is not the case of the plaintiff that the defendant has taken loan from the plaintiff for the purpose of any business and the defendant has utilized the said amount in this business. The plaintiff in the cause title of the plaint only mentioned that the defendant, namely, Rita Kedia carrying on business but it is not clear that the defendant had taken the said amount for the purpose of its business.

20. The judgment relied by the plaintiff in the case of ***Venketesh Vincom (supra)*** but in the said case in paragraph 11, the Hon'ble Division Bench of this Court held that:

> ***"11.*** *We do not find that the aforesaid judgment can be of any aid to the instant matter except for the proposition that unless the dispute satisfies the definition of a commercial dispute, any other disputes may not be brought before the Commercial Court. In the instant matter the Respondent no. 1 is admittedly running a multicuisine restaurant and bar and selling its products for profit. The appellant is a non-banking financial company and engaged in a business of financing or extending financial supports and making profit from the same. Any money given on loan is the ordinary transaction of the non banking financial company provided it augments income from such transactions. The Respondent no. 1 who is selling the product for profit is a merchant and, therefore, the transaction between the plaintiff who is engaged in a finance business extending loan for profit is a transaction between a financer and the merchant."*

In the above case, the Hon'ble Court noticed that the plaintiff being the Non-Banking Financial Institution lent and advance money to the defendant and the defendant has used the said amount for the purpose of its business of Bar and Restaurant but in the present case, the plaintiff is silent for what purpose, the defendant has taken loan from the plaintiff. Thus the judgment relied by the plaintiff is distinguishable from the facts and circumstances of the present case.

21. Only the plaintiff being a Non–Banking Financial Institution, lent and advance money to the defendant and the defendant has issued account confirmation will not constitute commercial transaction. There is no case is made out by the plaintiff that the plaintiff has lent and advance an amount of Rs. 15,00,000/- to the defendant in course of business and the defendant has utilized the said amount for its business purpose.

22. In view of the above, the suit filed by the plaintiff not covered under any of clauses of Section 2(1)(c) of the Commercial Courts Act, 2015. The plaint along with all documents be returned to the plaintiff to be presented before the appropriate Court.

23. **GA No. 2 of 2023** is **allowed**. **CS-COM No. 341 of 2024 (Old No. CS 17 of 2022)** is **dismissed**.

(Krishna Rao, J.)