



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 80 OF 2023

1. Sulabha Sudhakar Kadam,
Real Estate,
Age – Major, Occ. : Service,
R/o. : Birla Aurora, Level 21,
Plot No.1080, Dr. Anni Besant Road,
Worli, Mumbai – 400 030
old R/o. : 130, Cross Sector,
Pandurang Budhkar Marg, Worli,
Mumbai – 400 018

... APPLICANT
(Ori. Defendant No.4)

VERSUS

1. Bhaktabandhu R. Padhi
Partner of M/s. Naivedya Restaurant,
Age : 44 years, Occ. : Business,
R/o. : Jalna Road, Aurangabad
2. Siemens Limited (deleted)
3. Mr. Jaochim Marreck (deleted)
4. S. Subramaniam (deleted)
5. Prabhat Patra (deleted)

... RESPONDENTS
(Respondent No.1 – Ori. Plaintiff)

...
Mr. Chaitanya V. Dharurkar a/w. Mr. Akshay Radikar – Advocate
for Applicant
Mr. Mahesh R. Sonawane – Advocate for Respondent No.1
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 14th February, 2024

ORDER :

1. The applicant who is original defendant No.4 in Special Civil

Suit No.239 of 2013 has filed this application for challenging the order dated 20th March, 2023 passed by the learned 6th Joint Civil Judge (Senior Division), Aurangabad (hereinafter referred to as "*learned Trial Court*" for short) below Exhibit – 13 whereby the application for rejection of plaint as per Order VII Rule 11 of Civil Procedure Code ("C.P.C." for short) has been rejected.

2. Learned Counsel for applicant submits that, the present respondent No.1 i.e. original plaintiff has filed suit for recovery of amount against present applicant and respondent Nos.2 to 5. According to him, cause of action for filing the aforesaid Special Civil Suit No.239 of 2013 is based on agreement dated 12th November, 2011 between respondent No.1 – plaintiff and Siemens Limited. According to him, though the aforesaid agreement which was in respect of supply of certain food articles, was executed by original defendant Nos.1 to 3, but it was actually on behalf of Siemens Limited and those defendants were not having any personal interest or obligations in respect of said contract. He further argued that, respondent No.1 – plaintiff cannot continue the aforesaid suit against the original defendants excluding the defendant company since, considering their capacity being not

personal. There was no such cause of action against them. He also pointed out that, the original defendants excluding a company are therefore not necessary parties and the suit of plaintiff is bad for mis-joinder of the parties. Learned Counsel for applicant also relied on the following judgments :

- (i) ***SNP Shipping Services Pvt. Ltd. and others Vs. World Tanker Carrier Corporation and another*** reported in AIR 2000 BOM 34
- (ii) ***The Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman Vs. M/s. Ponniamman Educational Trust rep. by its Chairperson/Managing Trustee*** reported in AIR 2012 SC 3912
- (iii) ***I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others*** reported in AIR 1998 SUPREME COURT 634
- (iv) ***Tristar Consultant Vs. M/s. Customer Services India Pvt. and another*** reported in AIR 2007 Delhi 157
- (v) ***T. Arivandandam v. T.c. Vs. Satyapal and another*** reported in AIR 1977 SC 2421

3. On the contrary, learned Counsel for respondent No.1 i.e.

original plaintiff strongly opposed the submissions made on behalf of applicant. He pointed out that, the plaintiff has already joined the company as defendant No.5 and, therefore, the present suit can be continued against all the defendants, since the original defendant Nos.1 to 4 have admitted execution of the aforesaid documents. Further, according to him the plaintiff has already mentioned the cause of action specifically in the plaint at paragraph No.13 and, therefore, the plaint cannot be rejected by holding that no cause of action is stated in the plaint. For the suit being bad for mis-joinder of the parties, he submitted that such ground for rejection of plaint is not available in Order VII Rule 11 of C.P.C. As such, he prayed for dismissal of the application.

4. Heard rival submissions and also perused the documents on record and the citations relied upon.

5. There is no dispute on what ground the rejection of plaint can be done under Order VII Rule 11 of C.P.C. On going through the clauses from [a] to [f] nothing is mentioned that, the plaint can be rejected if it is found that suit is bad for mis-joinder of the parties. On the contrary, under Order I Rule 9 of C.P.C. a suit cannot be dismissed on the ground of mis-joinder of the parties.

Therefore, rejection of the plaint sought by the present applicant on the basis of mis-joinder of the parties is not at all permissible in the eye of law.

6. So far as rejection of plaint for want of cause of action, is concerned it is settled that, for the purpose of rejection of plaint under Order VII Rule 11 of C.P.C. only averments made in the plaint are to be seen. On going through the copy of plaint annexed herewith it is clearly evident that, respondent No.1 – plaintiff in paragraph No.13 of the plaint has specifically mentioned cause of action, which according to him arose on 27th August, 2013 when the original defendants despite notice failed to make payment to him which was due. It appears that, the applicant is claiming that since they did not sign the agreement in personal capacity there was no cause of action for recovery against them. However, it is not disputed that, they signed the agreement in dispute on behalf of the company and now the company is made party – defendant by the plaintiff. Therefore, such cause of action now do exists. Though the learned Counsel for applicant has relied upon so many judgments as mentioned above but the same are properly considered by the learned Trial Court, therefore, when the cause of

action is stated in the plaint itself and the Siemens Limited is also joined as party – defendant, there is no substance in the present application. Accordingly, the Civil Revision Application stands dismissed and accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE