



A.No.4065 of 2024

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 11.12.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

Application No.4065 of 2024
in
C.S.(Comm.Div.) No.262 of 2023

Mrs.Mital Surendira

Applicant /defendant

Versus

1.Miss Malack Safaa Fathima

2.Miss Malack Samha Fathima

Respondents/Plaintiffs

For Applicant : Mr.S.M.Khan
for Mr.Haja Mohideen Gisthi

For Respondents : Mr.K.M.Aasim Shehazd
for M/s.BFS Legal

ORDER

This application has been filed by the defendant under Order VII Rule 11 of Civil Procedure Code (CPC) seeking for rejection of plaint.

2. In the forthcoming paragraphs, the parties will be referred to as arrayed in the main suit.



A.No.4065 of 2024

3. The following grounds have been raised by the defendant for rejection of plaint:-

(a) The suit is barred by limitation.

(b) Abuse of process of law and Court has been committed by the plaintiffs by filing the suit, since the claims towards interest and damages sought for by the plaintiffs are exorbitant and in violation of statutory provisions.

(c) The suit is not maintainable, since the claim for damages sought for by the plaintiffs has already been dismissed by the Rent Controller in RLTOP No.380 of 2020, dated 25.10.2021.

4. A counter affidavit has been filed by the respondents/plaintiffs denying the contentions of the applicant/defendant by giving the following reasons:-

(a) The suit is well within the period of limitation, since the plaintiffs have claimed arrears of rent only from April, 2018 onwards. The plaintiffs have also contended that on account of Covid-19, the Hon'ble Supreme Court directed the Courts below to exclude the period from 15.03.2020 till 28.02.2022 and a further period of 90 days, while computing the period of limitation for fresh filing of a case. Therefore,



A.No.4065 of 2024

the plaintiffs contend that since the suit was filed on 14.06.2023, the suit is well within the period of limitation.

(b) Since the lease agreement enables the plaintiffs to claim interest from the defendant as claimed in the suit, there is no abuse of process of law and Court committed by the plaintiffs.

(c) The case filed before the XVI Court of Small Causes, Chennai, in RLTOP No.380 of 2020 is only for rental arrears and the said case was also dismissed with respect to rental arrears holding that the reliefs sought for by the plaintiffs before the Rent Controller is not maintainable under Sections 21(2)(a) and 21(2)(b) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. Therefore, in view of dismissal of RLTOP on the ground of maintainability, the present suit came to be filed. Therefore, according to the plaintiffs, the suit is maintainable before this Court.

DISCUSSION:-

5. This Court, while deciding an application for rejection of plaint will have to look into only the plaint averments. Unless and until clinching undisputed evidence is placed on record by the defendant in respect of the grounds raised for rejection of plaint, the question of



A.No.4065 of 2024

entertaining the application filed under Order VII Rule 11 CPC does not

arise. Adequate averments have been made in the plaint to substantiate their claim that the suit is well within the period of limitation as observed supra. The plaintiff has in the suit claimed only arrears of rent from the defendant from April, 2018 onwards. The period from 15.03.2020 till 28.02.2022 and a further period of 90 days has been excluded for the purpose of saving limitation on account of Covid-19 pursuant to the directions issued by the Hon'ble Supreme Court. The said period for exclusion while computing the period of limitation is undisputed. The suit has been filed in June, 2023, which is within the period of 3 years after excluding the period, namely, from 15.03.2020 till 28.02.2022, and a further period of 90 days, pursuant to the general directions issued by the Hon'ble Supreme Court on account of Covid-19.

6. The limitation is a mixed question of fact. Since there is no undisputed evidence placed on record by the defendant to prove that the suit is barred by limitation, the question of allowing this application does not arise. Only after trial, the issue whether the suit is barred by limitation or not can be decided.



A.No.4065 of 2024

7. Further, in the case on hand, admittedly, the right to file written

statement by the defendant has been forfeited pursuant to the orders passed by this Court on account of the fact that the written statement was not filed by the defendant within the statutory period under the Commercial Courts Act. Having not filed the written statement within the statutory period and having lost the right to file the same pursuant to the orders passed by this Court, the question of permitting the defendant to raise the grounds in this application which ought to have been raised in the written statement does not arise.

8. Insofar as the other grounds raised by the defendant, namely, abuse of process of law and Court on account of the alleged inflated claim made by the plaintiffs is concerned, the plaintiffs have contended in the plaint that only based on the lease agreement entered into between the plaintiffs and the defendant, the suit claim has been made which includes interest and damages. It is settled law that the Court, while deciding an application under Order VII Rule 11 CPC, has to look into the plaint averments alone. In the case on hand, adequate averments have been made. Therefore, whether the plaintiffs are legally entitled to the suit claim or not can be adjudicated only after trial and not in this application



A.No.4065 of 2024

under Order VII Rule 11 CPC.

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9. Admittedly, only on the ground of maintainability, RLTOP No.380 of 2020 filed before the XVI Court of Small Causes, Chennai, has been partly allowed by granting eviction in favour of the plaintiffs, but, refusing to grant other reliefs sought for by the plaintiff, namely, arrears of rent and damages. Since the Rent Controller does not have power to grant such reliefs, the plaintiffs have approached this Court seeking for the reliefs which were not granted by the Rent Controller. Whether this Court is having the power or not to grant the reliefs as prayed for in the suit is a matter for trial and it cannot be decided in an application filed under Order VII Rule 11 CPC for rejection of plaint. The plaint cannot be thrown out/rejected at the threshold itself as the defendant has not produced any undisputed evidence before this Court to prove that (a) the suit is barred by limitation; (b) filing of the suit amounts to abuse of process of law and Court; and (c) the suit is not maintainable on the ground that the reliefs sought for by the plaintiffs were earlier rejected by the Rent Controller in RTOP No.380 of 2020, dated 25.10.2021.

10. Since there are several triable issues involved and adequate



A.No.4065 of 2024

averments have been made in the plaint in respect of the subject claim,

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this Court is of the considered view that this application filed by the defendant under Order VII Rule 11 CPC for rejection of plaint is not maintainable and accordingly, this application is dismissed.

11. Post the matter for Case Management Hearing on 13.01.2025 and on that date, both the parties are directed to file their joint draft Case Management Schedule.

11.12.2024

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Index:yes/no
Neutral citation: yes/no

ABDUL QUDDHOSE,J.

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