



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CR-29-2024 (O&M)
Date of decision : 23.07.2024

Mrs. Raj Bala and another

..... Petitioners

versus

Mr. Rishabh Birla and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sandeep Phogat, Advocate and
Mr. Vaibhav Narang, Advocate
for the petitioners.

Mr. Shiva Handa, Advocate and
Mr. Rahul Makkar, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

1. Present revision is at the behest of defendants impugning the order dated 04.10.2023, whereby application filed under Order 7 Rule 11 CPC seeking rejection of the plaint stands refused.

2. Plaintiffs filed suit for declaration, further seeking decree of specific performance with possession and permanent injunction against the defendants. The case of the plaintiffs was that they alongwith one Akanksha Birla are the legal heirs of late Anurag Birla. Anurag Birla was issued allotment letter by defendant No.4 i.e. the developer with respect to plot admeasuring 502.36 sq. yards located in the residential complexes known as Suncity, Sector 54 Gurugram (hereinafter referred to as the suit property). It was further claimed that Anurag Birla apart from paying the booking amount, further paid



installments and in all paid an amount of Rs.18,31,550/-. Letter of possession dated 21.01.2005 was issued and a demand of Rs.2,31,567/- was raised by the developer. Anurag Birla is stated to have unfortunately passed away on 25.11.2013. He by way of registered Will bearing vasika No.502 dated 31.05.2013 during his life time bequeathed the suit property in favour of the plaintiffs in equal shares. Plaintiffs claimed that developer issued letter dated 02.05.2014 in the name of late Anurag Birla calling upon him to make balance payment of Rs.2,885/- towards the basic sale price of the said plot and further payment of Rs.21,10,000/- towards stamp duty charges and Rs.75,000/- towards registration fee so that the sale deed can be executed in his favour. Plaintiffs as per the averments raised in the plaint are stated to have approached defendant No.4 for substituting their names in place of Shri Anurag Birla on the basis of Will. However, the name was not substituted. It was further claimed that when the plaintiffs visited the suit property in March 2023, they came to know that construction was being raised by defendant No.4 over the plot. On further queries being made by the plaintiffs, they came to know that defendants No.1 and 2 executed sale deed dated 26.07.2021 in favour of defendant No.3 on the strength of conveyance deed 16.11.2020 executed by the developer in favour of defendants No.1 and 2.

3. Present suit was filed on 30.05.2023. After being put to notice, defendants No.1 and 2 filed their written statement alongwith reply to the application under Order 39, Rule 1 and 2 and also filed application under Order 7 Rule 11 CPC seeking rejection of the plaint



on the ground that the same was barred by time and without any cause of action. The application stands rejected vide impugned order.

4. Learned counsel appearing for defendants No.1 and 2-the petitioners has assailed the order on the ground that the Trial Court failed to appreciate the fact that suit for specific performance was being filed in the year 2023 on the strength of allotment letter dated 02.04.2024. He further submits that from the bare averment of the plaint, it is evident that the substitution was denied to the plaintiffs in the year 2014 and even from that date, the present suit seeking decree of specific performance would be patently barred. He thus submits that the Trial Court ought to have rejected the plaint being barred by time invoking Section 3 of the Limitation Act.

5. Counsel appearing on behalf of respondent No.3 supplements the plea raised by counsel for the petitioners and submits that it is a case of clever drafting as the plaintiffs deliberately did not disclose the date of accrual of cause of action in their favour. He thus submits that Trial Court ought to have seen beyond the clever drafting and dismissed the suit at the threshold being barred under Order 7 Rule 11(d) of the Code of Civil Procedure. In order to hammerforth his contention, he has relied upon judgment passed by Supreme Court in ***Civil Appeal No.500 of 2022*** titled as '***C.S. Ramaswamy vs. V.K. Sentil and ors***' decided on 30.09.2022.

6. I have heard counsel for the petitioners as well as counsel for respondent No.3 and have carefully gone through the records of the case.



7. The plea in substance raised by both the counsels is two fold i.e.:-

- (a) That the suit is barred by time.
- (b) That the suit is without cause of action.

8. In order to appreciate the plea, it will be apt to peruse bare provision of law that governs the suit for specific performance of the contract.

9. Article 54 of the Limitation Act reads as under:-

Description of suit	Period of limitation	Time from which period begins to run
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

10. Thus, Article 54 contemplates two situations. The first situation deals with where there is a date fixed for the performance of the contract. In such case, the limitation of 03 years to file suit for specific performance of a contract shall begin to run from such date fixed for the performance. In the second situation, wherein there is no date fixed for the performance of the contract, the limitation to file suit is still 03 years, but the same shall begin to run from the date when the plaintiff has noticed that performance is refused.

11. Counsel representing the parties agreed that in the present case, the first situation will be attracted. However, both the counsels claim that the case would fall within the second situation contemplated under Article 54 and would be barred by time. On being asked specifically, as to what is the date of refusal from which the limitation shall begin, the counsels submit that the plaint has been cleverly



drafted to conceal the same, but careful reading shows that the plaintiff came to know of the refusal after 06 months from the communication dated 02.05.2014. Reference is being made to para 11 of the plaint read with para 10 of the agreement relied upon by the plaintiffs themselves. It has been further argued that the documents relied upon by the plaintiff can be well relied to adjudicate application Order 7 Rule 11 CPC.

12. Para 11 of the plaint as well as para 10 of the allotment letter being relied upon by the counsels reads as under:-

“11. That in fact, the plaintiff number 1 also informed the officials of defendant number 4 that the plaintiffs were ready for the execution and registration of the conveyance deed in their favour in respect of the said plot. Plaintiff number 1 had also asked the officials of defendant number 4 about the procedure pertaining to the substitution of the names of the allottees and consequent execution and registration of conveyance deed. However, the officials of defendant no.4 kept delaying the matter on one pretext or another and simply failed to make the requisite changes in the records and to execute and register conveyance deed in favour of the plaintiffs in respect of the said plot.

10. The allottee also agrees to make all payments through demand drafts/cheque drawn upon and payable at New Delhi/Delhi only. The punctual payment on time is the essence of this contract. It shall be incumbent on the allottee to comply with the terms of payment and other conditions of sale, failing which the allottee shall have to pay interest on the delayed payments @ 18% per annum upto three months and @ 24% per annum beyond three



months. If the payments are delayed beyond six months the allotment shall stand cancelled and 10% of the total sale price of the plot will be forfeited and the balance amount, if any, will be refunded without any interest.”

13. The law with respect to Order 7 Rule 11, CPC stands elaborately laid down by Supreme Court in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) through LRs & ors., 2020 INSC 450.***

14. Dictum of law laid down in ***Dahiben’s case (supra)***, was reiterated by the Apex Court in ***Geetha, D/o Late Krishna & Ors. vs. Nanjundaswamy & Ors. 2023 INSC 964***, wherein Supreme Court after reproducing the conclusions in ***Dahiben’s case (supra)*** laid down the test as under:-

“XX XX XX

6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali* as follows:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed,



or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the



plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

....

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not 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 as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be



passed."

23.12. In *Hardesh Ores (P) Ltd. v. Hede& Co.* [*Hardesh Ores (P) Ltd. v. Hede& Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* [*D Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941).

23.13. 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 sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281: (1998)



2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.”

15. Thus, in order to ascertain whether the plaint falls within the mischief of Order 7 Rule 11 CPC and thus deserves to be rejected, the same has to be read as a whole.

16. Applying the aforesaid parameter and the test prescribed by the Apex Court, this Court finds that the argument raised by the counsels is totally misconceived.

17. It cannot be said that suit has been filed without cause of action. Predecessor in interest of plaintiff was allotted suit property by respondent No.4. Once respondent No.4 executed sale deed in favour of third party, cause of action to file suit against the vendor as well as the subsequent purchasers arose in favour of plaintiff. Section 19 of the Specific Relief Act, 1963 deals with the situation and reads as under:-

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific



performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- 1[(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.]
- (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:
Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

- 19. In view of above, present petition is dismissed.
- 20. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

23.07.2024

Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No