

Ct.
No.
237
bd
27.
Bd

26.03
2025

C.O. 3858 of 2024

Mr. Sachindra Nath Rakshit & Ors.
-Vs-
Sri Amaresh Chowdhury

Mr. Saswata Bhattacharya
Ms. Simu Ghosh
Mr. Akhi Kayal ... for the petitioners.

Ms. Karabi Roy ... for the opposite party.

Ms. Karabi Roy, learned counsel appearing on behalf of the opposite party undertakes to file vakalatnama.

The petitioners handed over one copy of the application to learned counsel appeared on behalf of the opposite party.

This is an application wherein the petitioners have challenged the order no. 11 dated 15.05.2024 passed in Money Suit No. 47 of 2023. By the order impugned learned trial court has rejected the petitioners/defendants application under Order VII Rule 11 of the Code of Civil Procedure.

Before the court below the petitioners herein as defendants filed an application contending that plaintiff has filed aforesaid money suit suppressing material fact that he has already filed another Suit No. 98 of 2023 before the learned 6th

Court Additional Civil Judge, (Senior Division), Gandhi Dham, Kachcha at Gujrat, against the defendant nos. 1 to 5 and he has also suppressed that his parents have filed criminal complaint case being Case No. 41 of 2023 before 3rd Court of Judicial Magistrate, Paschim Medinipore against all the defendants. The other grounds agitated by the defendants in their petition are that the plaintiff has suppressed his educational qualification and occupation before the court. He has also taken a ground that from the plaint, it is clear that plaintiff has stated about creation of unnatural situation and nuisance by the defendant no. 3 in paragraph 6, 8 and 12 but he has suppressed with an oblique motive, what particular act was allegedly done by the defendant no. 3. He further contended that defendant no. 3 was tutored repeatedly by her in-laws/plaintiffs to get acquittal in connection with the incident that had taken place on 28th November, 2022 but said fact has been suppressed in the plaint.

Accordingly, defendants have contended that plaintiff in his plaint has failed to make out any cause of action for instituting the aforesaid suit

and as such the plaint is liable to be rejected for want of cause of action and also for suppression of material facts in the plaint.

The court below after hearing the parties passed the impugned order.

Learned counsel appearing on behalf of the opposite party raised objection contending that the plaintiff had filed the application under order VII Rule 11 with a prayer for rejection of plaint but he has failed to make out any of the scheduled ground for which the plaint can be rejected. She further contended that the plaint has clearly disclosed a cause of action and as such the trial court was quite justified in rejecting the defendants prayer for rejection of plaint.

It appears from the order of the trial court that he has relied certain judgments and ultimately observed that on a bare reading of the plaint it appears that the plaintiff has mentioned a cause of action in the plaint in respect of which he has filed the suit. He further observed that the ground of non-disclosure of unnatural events/ nuisance committed by defendant no. 3 as alleged cannot be a ground for rejection of a plaint.

On perusal of copy of plaint, it appears that in para 27 of the plaint, plaintiff has described cause of action for filing the suit. Non-disclosure of cause of action in the plaint and the absence of cause of action in the suit are not synonymous. The phrase in Rule 13 “does not disclose cause of action” is meant failure to disclose a cause of action and not that there is no cause of action for the suit. For ascertainment of disclosure about cause of action, only the averments made in the plaint are germane and not the defence of the defendant or the documents relied upon by the defendant.

Having considering the submissions made on behalf of the parties and also going through the observations made by the court below, I do not find any illegality or perversity or gross irregularity in the order impugned, which can call for interference by this court, invoking this Court’s jurisdiction under Article 227 of the Constitution of India.

Thus, C.O. 3858 of 2024 stands dismissed.

However, this dismissal order will not preclude the defendants to prefer appropriate

application before the court below challenging the maintainability of the suit subject to legality and admissibility of such an application.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)