
(2014) 11 AP CK 0111

In the Andhra Pradesh High Court

Case No : C.R.P. Nos. 2645 and 2646 of 2012

Ahmed Nawaz Alladin

APPELLANT

Vs

Hyderabad Industries Limited

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a), 11(a), 151

Citation : (2014) 11 AP CK 0111

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

Advocate : R.A. Atchuthanand, Advocates for the Appellant; S. Ravi, Sr. Counsel, Advocates for the Respondent

Judgement

L.N. Reddy, J.—The petitioner is the owner of an item of immovable property at Azamabad, Hyderabad. He executed a lease deed dated 16-07-1975, in favour of the respondent in respect of the suit schedule property, for a period of 99 years. Clause 16 thereof provided for sale of the property in favour of the respondent, subject to the condition stipulated therein. The respondent filed O.S. No. 2072 of 2011 in the Court of V Junior Civil Judge, City Civil Court, Hyderabad, for the relief of specific performance under the relevant clause of the lease deed. On receipt of summons in the suit, the petitioner filed I.A. No. 825 of 2011 under Order VII Rule 11(a) read with Section 151 C.P.C., with a prayer to reject the plaint. His contention was that the respondent has invoked only the first paragraph of Clause 16, and if read in conjunction with second paragraph, the suit would be without cause of action. He pleaded that it is only when the execution of sale does not take place, by the end of lease period, that the respondent can make the payment and insist on conveyance of the property. It was urged that the suit, as it stands now, cannot be maintained in law, since it is without cause of action.

2. The respondent opposed the I.A., by filing a counter. It was stated that the Clause 16 of the lease deed provides for sale of the property, even before expiry

of the lease, and the first paragraph of Clause 16 was adequate to provide a cause of action in this behalf. It was also pleaded that a plaint can be rejected only when it does not disclose "cause of action", as distinguished from the existence of cause of action. Both the parties relied upon certain precedents.

3. Through its order dated 28-02-2012 the trial Court dismissed the I.A. Hence, this revision.

4. Sri R.A. Atchuthanand, learned counsel for the petitioner submits that the lease deed, no doubt, contained a clause, providing for sale of the property, but it has various facets. According to him, while the first paragraph of Clause 16 provided for the sale of the property, if the petitioner is willing, the second paragraph conferred right upon the respondent, to deposit the consideration, three months before the expiry of the lease, if the sale transaction has not taken place by that time, and that it is only under the second paragraph, that the respondent can claim any right. He submits that the suit, based upon the first paragraph of clause 16, does not disclose "cause of action" and the trial Court ought to have rejected the plaint.

5. Sri S. Ravi, learned Senior Counsel for the respondent, on the other hand, submits that once it is not disputed that clause 16 of the lease deed provided for sale of the property, the plaint cannot be said to be without cause of action. He contends that the respondent is given option to pay the amount, even before the expiry of the lease, and the question as to whether it is obligatory on the part of the petitioner to execute the sale deed, needs to be decided in the suit. He submits that the trial Court has taken the correct view of the matter, and it is not a case for rejection of a plaint.

6. The suit filed by the respondent is based upon a clause contained in a lease deed dated 16-07-1975, executed between the petitioner and the respondent. The entire clause reads as under:

Clause 16: It is hereby expressly agreed and declared that the LESSOR hereby undertakes to sell during the subsistence of this lease, the demised land to the LESSEE or its nominee only at the sale price calculated at the rate agreed to herein viz. Rs. 10/- per Sq. Yard."

It is further agreed and declared that if the sale is not effected during the subsistence of this lease as aforesaid then the LESSEE within three months from the expiry of the lease term of 99 years may call upon the LESSOR to execute a proper sale deed in its favour paying to the LESSOR, the Sale Price of Rs. 10/- per Sq. Yard as aforesaid. The LESSOR shall at the cost of the LESSEE execute a proper sale deed in favour of the LESSEE conveying and transferring the demised land absolutely.

7. The respondent pleaded that it is willing to pay the consideration, as provided for under the clause, and prayed for a decree for specific performance. In the plaint, however, the first paragraph alone was extracted. The petitioner wanted

the trial Court to reject the plaint on the ground that it is bereft of cause of action. Order VII Rule 11(a) was invoked.

8. Rejection of a plaint is almost a rarity, and by and large the Courts would prefer to adjudicate the suits on merits, than to discard them at the threshold. It is only when the grounds mentioned in Rule 11 of Order VII C.P.C. are pleaded and established, that a plaint can be rejected, and thereby, denying access to the plaintiff therein, to the Court. The Hon"ble Supreme Court has been consistently taking the view that it is only the contents of the plaint, that need to be taken into account, for determining the existence or otherwise of the ground referable to Section 11(a), and not any external material.

9. Existence of "cause of action" is a sine qua non, for a suit. It is only when the same is said to be existing, that a suit can be maintained. The expression "cause of action" is not amenable to any precise definition or even description. The jurists and courts opined that cause of action is a bundle of facts, which independently or in tandem, confer right upon the plaintiff to seek remedy in the Court. Some times, a single act may give rise to the cause of action, and on other occasions, it may be a series of events, that have taken place between the parties, over a long period. Obviously to be on safe side, the clause, pertaining to cause of action, in a plaint, is drafted in such a way, that it takes in its fold, every act and omission of the parties in relation to a the subject-matter.

10. Of all the grounds mentioned in Rule 11(a) of Order VII, the one, relating to "cause of action" is a bit difficult to establish. It is more a case of perception, than of clear demonstration, with reference to any particular event. For example, the bar of jurisdiction of trial Court, occurring at Rule 11(d), can be easily established by referring to the relevant provision of law, which bars the suit, and the one, relating to a Court fee under 11(b) and (c) can be established by making reference to the Court fee, which is required to be paid and the one, which has already been paid.

11. Realizing the difficulty in ascribing a definite meaning to the expression "cause of action" with the required amount of precision, that too, in the context of rejection of a plaint, the Courts have maintained distinction between the "existence of cause of action", on the one hand, and the "disclosure of cause of action", on the other hand. It was held that it is only when the plaint fails to "disclose" cause of action as distinguished from "existence" of cause of action, that the plaint can be rejected. To decide whether or not the plaint discloses cause of action, one has only to read the relevant paragraph in the plaint, and not any other external material. Here again, the settled principle, viz., that the contents of the plaint must be taken on their face value, even if there is a possibility of their factually being incorrect; must be kept in mind. "Existence of cause of action", on the other hand, is to be proved at the trial and hearing of the suit. Obviously for that reason, the Hon"ble Supreme Court in A.K. Gupta and Sons Vs. Damodar Valley Corporation, held that the expression "cause of action" does not mean, every fact, which is to be proved to entitle the plaintiff to

succeed. The plaint can be rejected only on finding that it does not disclose cause of action in contradistinction to the non-existence of the same.

12. The trial Court has taken the correct view of the matter and this Court is not inclined to interfere with the orders under revision. The C.R. Ps. are accordingly dismissed.

13. The miscellaneous petitions filed in these C.R. Ps., shall also stand disposed of.

14. There shall be no order as to costs.