

(2012) 01 MAD CK 0111

In the Madras High Court

Case No : C.R.P. (NPD) No. 2308 of 2005

Central Government Employees Welfare Housing Organization APPELLANT
Vs

Consolidated Civil Constructions (I) Ltd. and Bharath Overseas Bank RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 9, 115

Citation : (2012) 01 MAD CK 0111

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : K.S.V. Prasad, for the Appellant; Ajay Kumar Gnanam for R1 and No Appearance for R2, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam

1. This revision filed, u/s 115 of the CPC (CPC), is directed against the order dated 22.06.2005, passed by the learned VII Assistant City Civil

Court, Chennai, in O.S.No. 1755 of 2004, dismissing the plea of the petitioner to reject the plaint under Order 7, Rule 11, CPC.

2. first defendant in O.S.No. 1755 of 2004, is the revision petitioner and the first respondent herein is the plaintiff. The second respondent bank is

the second defendant in the suit. The respondent/plaintiff filed the suit against the petitioner for a judgment and decree of permanent injunction

restraining the petitioner from invoking the amount secured under the bank guarantee, dated 14.10.2005, from the second defendant bank, except

by due process of law. The case of the respondent/plaintiff is that a tender floated by the petitioner for a turn key Housing Project at Chennai, and

the tender conditions were stipulated, by letter dated 02.09.2003. The respondent/plaintiff participated in the tender and submitted their bid on 14.10.2003 and executed a proforma for bid security in the form of bank guarantee for Rs. 10,00,000/-in favour of the petitioner and such bank guarantee was arranged through the second respondent bank, by document dated 14.10.2003, executed at Chennai.

3. According to the respondent/plaintiff, the bank guarantee can be invoked by them only on certain conditions and that they have not violated any

of such condition and during the period of validity of the bid, the respondent/plaintiff withdrew their offer and therefore, the question of invoking the

bank guarantee does not arise. It has been further stated that the petitioner knowing fully well that the bid period had expired on 14.01.2004,

threatened to invoke the bank guarantee, which was due to expire on 15.04.2004 and therefore, approached the Court by filing the suit. It is

stated that the cause of action for the suit arose at Chennai within the jurisdiction of the City Civil Court on 02.09.2003, when the letter was sent

by the petitioner to the respondent/plaintiff, satisfying the bid validity period, when the petitioner floated the tender for their turn key Housing

Project at Chennai on 14.10.2003; when the bid was submitted and the bank guarantee was issued in favour of the petitioner by the second

respondent bank from Chennai and when the petitioner is threatened that they will claim the bank guarantee from the second respondent at

Chennai and therefore, the cause of action has arisen at Chennai.

4. The petitioner/first defendant filed their written statement, stating that the suit is not maintainable either on law or on facts and the City Civil

Court at Chennai, has no territorial jurisdiction to entertain the suit and as per condition No. 37.1.3 of the General Conditions of the contract, only

the Court within the jurisdiction of which the head office of the petitioner organization is located will have jurisdiction on any matter regarding

reference to Court and therefore, the City Civil Court at Chennai, has no jurisdiction. Further, it is stated that the petitioner organization is at New

Delhi and all proceedings of the tender were done in New Delhi and the petitioner does not have any office in Chennai and suit is not maintainable

before the City Civil Court at Chennai. That apart in the written statement, the petitioner/first defendant have also dealt with the merits of the matter

and have elaborately stated about the terms and conditions of the tender. Further, it was stated that there was a violation of conditions of contract

and the petitioner/first defendant organisation are entitled to invoke the bank guarantee given by the first respondent through the second respondent bank.

5. With the above averments, the parties went for trial and issues were settled and proof affidavit was filed by the plaintiff and the Court has also

drawn an issue as to whether the suit is maintainable and whether the Court has territorial jurisdiction over the subject matter and these issues were

directed to be considered as first among the several issues, which have been framed for consideration. At that stage of the matter, a petition was

filed by the petitioner herein under Order 7, Rule 11 CPC, to decide the preliminary issue and to reject the plaint. An affidavit filed in support of

the said petition, primarily raising two grounds, that the suit being not filed in the Court within the jurisdiction of which the head office of the

petitioner organization is situated, namely at New Delhi, as per clause 37.1.3 of the General Conditions of the contract and as per law laid down

by the Hon'ble Supreme Court, the plaint is liable to be rejected. Further, it was stated that the cause of action arose at New Delhi and the parties

having agreed to the jurisdiction of the Court at New Delhi, the City Civil Court has no territorial jurisdiction to entertain the suit. Apart from that it

was contended that the bank guarantee in question was invoked at 10.50 a.m on 15.04.2004 and it is alleged that the suit was numbered only on

afternoon on 15.04.2004 and the relief of injunction as sought for cannot be granted.

6. The claim made by the petitioner, was resisted by the first respondent/plaintiff, by filing a counter affidavit stating that the City Civil Court at

Chennai has territorial jurisdiction to try the suit and the suit is based on a bank guarantee arranged by the first respondent/plaintiff, through the

second respondent bank and the terms of bank guarantee were finalised and accepted only at Chennai and therefore, cause of action arose at

Chennai. It is further stated that the bank guarantee on which the suit filed, is an independent contract, which is different from the alleged general

conditions of contract, which has not been signed by both plaintiff and the first defendant. Further, it is contended that the issue regarding

maintainability as stated by the petitioner in their affidavit cannot be decided as a preliminary issue under Order 7, Rule 11 CPC. Further, it is

stated that the project in question was to be executed only at Chennai and the plaintiff and the second defendant are having offices at Chennai and

threat to invoke the bank guarantee, is at Chennai and therefore, the suit is maintainable.

7. The trial Court considering the contentions raised on either side, by order dated 22.06.2005, rejected the contention of the petitioner/first

defendant. Aggrieved by the same, the petitioner has preferred this revision.

8. The learned counsel appearing for the petitioner submitted that the pleadings in the plaint alone should be considered to decide the cause of

action, which is a bundle of fact required to be proved by the plaintiff, if controverted by the defendant and that the cause of action for the suit

should contain at least some act on the part of defendant and major part of cause of action should be within the jurisdiction of the Court. The

learned counsel further submitted that the parties can confine the jurisdiction to one of the courts. The learned counsel submitted that in the body of

the plaint, there is no disclosure about cause of action at Chennai and factum of taking a bank guarantee will not constitute part of cause of action

and if this is deleted the plaint does not disclose any cause of action. Further, it is contended that every step in completion of the contract is a mere

offer and the parties can agree to confer jurisdiction on one Court and in terms of clause No. 37.1.3 of the General Conditions, the Courts at New

Delhi alone shall have jurisdiction. The learned counsel reiterated the contentions mentioned in the affidavit filed in support of the Interlocutory

Application filed under Order 7, Rule 11, CPC. In support of his contention, the learned counsel placed reliance on the decision of the Hon"ble

Supreme Court in *Globe Transport Corporation Vs. Triveni Engineering Works and Another*, ; *M/s. Angile Insulations Vs. M/s. Davy Ashmore*

India Ltd. and another, ; *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, *Hanil Era Textiles Ltd. vs. Puromati Filters*

(P) Ltd, CDJ 2004 SC 640, and the decision of the Hon"ble Division Bench of this Court in *S. Nagaraj Vs. S. Govindaswamy and Another*, and

a decision of the learned Single Judge of this Court in *Nelamega Bhattacharlar vs. T.R.Govindaraghavan and Ors*, AIR 2001 NOC 99 (Mad).

9. The learned counsel appearing for the respondent/plaintiff by referring to Order 7, Rule 11, CPC submitted that Rule 11 provides circumstances under which a plaint can be rejected and the plea raised by the petitioner does not fall under any one of the conditions required to be satisfied and therefore, the trial Court rightly rejected the prayer for rejection of the plaint. It is further submitted that the Court shall look into the plaint averments alone and the written statement and documents filed along with them cannot be looked into and the plaint discloses cause of action as the letter from the petitioner was sent to the plaintiff at Chennai on 02.09.2003 and the bank guarantee was issued at Chennai and the project is to be implemented at Chennai and therefore, the City Civil Court at Chennai has sufficient jurisdiction. Further, it is submitted that mere improper prayer in the plaint cannot be a ground to reject the plaint under Order 7, Rule 11, CPC. The learned counsel further submitted that the trial Court has given elaborate reasons for rejecting the plea and the plea was rightly refused, since the trial had already commenced, proof affidavit has been filed and documents have also been marked. In support of his contentions, the learned counsel referred to the decisions of the Hon"ble Supreme Court in Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, , Popat and Kotecha Property Vs. State Bank of India Staff Association, and Kamala and Others Vs. K.T. Eshwara Sa and Others, .

10. Heard the learned counsels appearing for the parties and perused the materials available on record.

11. It is on the above rival contention, it has been seen as to whether the trial Court was right in rejecting the request made by the petitioner/first defendant, to reject the plaint filed by the first respondent/plaintiff. Before, we go into the facts of the case, it would be necessary to look into the provisions of Order 7, Rule 11 CPC and for better appreciation, the same is extracted hereunder:

11. Rejection of plaint:- The plaint shall be rejected in the following cases:

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) Where the relief claimed is properly valued but the plaint is written upon

paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9. Provided that the time fixed by the Court for the correction of the valuation or

supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was

prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within

the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

High Court Amendment (Madras): For Clause (c) substitute the following:

(c) Where the relief claimed is property valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the

deficiency within the time, if any, granted by the Court

12. The Hon^{ble} Supreme Court while examining the object of Order 7 Rule 11 (a) CPC held that the idea underlying the said provision is that

when no cause of action is disclosed in plaint, the Court will not unnecessarily protract the hearing of the suit and that a party should not be

unnecessarily harassed in a suit. Further, for the purpose of invoking the said power, the Court has to read the plaint, to find out whether it

discloses a cause of action and if it does, then, the plaint cannot be rejected by the Court by exercising its power conferred under Order 7 Rule 11

(a) CPC. It is a trite law that cause of action is a bundle of facts and whether a plaint discloses a cause of action is a question of fact, which has to

be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. The Hon^{ble} Supreme Court in

Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, held that so long as the plaint discloses some

cause of action which requires determination by the Court, mere fact that in the opinion of the Judge, the plaintiff may not succeed, cannot be a

ground for rejection of the plaint. The Hon^{ble} Supreme Court in the case of

Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success

I and Another, elaborately dealt with the issue and held as follows:-

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.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For

the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on

any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

146. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause

of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a

cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose

of obtaining reliefs claimed in the suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.

149. In D. Ramachandran v. R.V. Janakiraman⁶⁴ it has been held that the court cannot dissect the pleading into several parts and consider

whether each one of them discloses a cause of action.

151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated

questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is

shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh⁶⁷ this Court held: (AIR pp. 943-44, para 9)

By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action.

The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the

petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting

relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the

court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences

which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of

law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations

are true in fact, or whether the petitioner will succeed in the claims made by him.

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak

and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the

absence of full particulars. (See *Mohan Rawale* 63.) 155. The reason for the aforementioned conclusion is that if a legal question is raised by the

defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the

CPC which may amount to prejudging the matter.

13. Thus, in terms of law laid down by the Hon'ble Supreme Court, the cause of action is a bundle of facts, which is required to be pleaded and

proved for the purposes of obtaining the relief sought for and the Court would be empowered to reject the plaint on the failure of the plaintiff to

disclose a cause of action, but the same would not mean that the averments made in the plaint or the document, which have to be relied on,

although discloses a cause of action, plaint could be rejected on the ground that it is not sufficient to prove the fact. Further, the Hon'ble Supreme

Court also cautioned that the Court cannot dissect the pleadings into several parts and the Court should not embark upon an elaborate enquiry into

doubtful or complicated questions of law or facts. Thus the test would be as long as the claim discloses, some cause of action or if it raises some

questions, which is fit to be decided, even if the facts of the case reveals that the plaintiff may not succeed, is not a ground to strike down the plaint.

14. Bearing the above legal principles in mind, if the facts of the present case are

examined, it would be required to consider the plaint averment. It is not in dispute that the petitioner/first defendant has its registered office at New Delhi, the first respondent/plaintiff has its registered office at Chennai and the second respondent/second defendant is a bank at Chennai. The offer made by the petitioner to participate in a tender floated by the petitioner/first defendant was from Chennai. The project for which the tenders were floated, were to be executed at Chennai. In order to satisfy the bid conditions, the plaintiff executed a bank guarantee in favour of the first defendant through its banker, the second defendant who is at Chennai. The suit came to be filed when there was a threat by the petitioner/first defendant to invoke the bank guarantee. The effect of such threat is stated to be at Chennai, since the bank guarantee was issued from Chennai.

15. Thus on examining the plaint averments more particularly, the paragraph relating to the cause of action, it does disclose that cause of action had arisen at Chennai, if not fully at atleast substantially. As held by the Hon''ble Supreme Court, a cause of action is a bundle of fact, which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. Therefore, if a plaint disclose a cause of action such plaint cannot be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining the relief claimed in the suit.

16. Thus the test is, if the averments made in the plaint are taken to be correct in their entirety, a decree could be passed and if the allegations in the plaint prima facie shows a cause of action, the Court cannot embark upon an enquiry whether the allegations are true infact or whether the plaintiff will succeed in the claim made by him. The Hon''ble Supreme Court in the decision in *Swamy Atmananda & O Rs. vs. Sri Ramakrishna Tapovanam & Ors*, referred supra, relied on by the learned counsel for the petitioner, while considering as to what would mean a cause of action held that it must include some act done by the defendants, since in the absence of such an act, no cause of action can possibly accrue and it is not limited to the actual infringement of right sued on, but includes all material facts on which it is founded. Therefore, the decision relied on by the learned counsel for the petitioner infact supports the reasoning given by this Court in the preceding paragraphs. Sofar as the ouster of jurisdiction,

the learned counsel placed reliance on the decision of the Hon''ble Supreme Court in the cases of Globe Transport Corpn., and Hanil Era Textiles

Ltd. vs. Puromati Filters (P) Ltd, referred supra, in my view, the question of ouster of jurisdiction is not required to be gone into at this stage of the

matter, since for the purpose of doing so, it would be necessary to examine the averments in the written statement and the documents filed by the

petitioner/first defendant, this would be clearly outside the purview of the court while examining as to whether any relief can be granted in an

application under Order 7, Rule 11 CPC.

17. Infact, the trial Court in the impugned order has observed that already an issue has been framed as regards the territorial jurisdiction, which has

to be decided at the time of trial. In the decision relied on by the learned counsel for the first respondent in Kamala and others vs. K.T.Eshwara

and Ors., referred supra, the Hon''ble Supreme Court examined the applicability of Order 7, Rule 11(d) CPC and held as follows:-

21. Order 7, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be

drawn from the averments made in the plaint. Different clauses in Order 7, Rule 11, in our opinion, should not be mixed up. Whereas in a given

case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that

effect must be arrived at. What would be relevant for invoking clause (d) of Order 7, Rule 11 of the Code is the averments made in the plaint. For

that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and

under different provisions of the Code. Order 7, Rule 11 of the Code is one, Order 14, Rule 2 is another.

22. For the purpose of invoking Order VII, Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter

which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order

under the said provision.

25.The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be

culled out therefrom is that the court at that stage would not consider any

evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject matter thereof, the application for registration of plaint should be entertained.

18. Thus, considering the above facts and the law laid down by the Hon''ble Supreme Court in the aforementioned decision, it is held that on

perusal of the plaint in question, it does disclose a cause of action and none of the conditions required to be fulfilled under Rule 11 of Order 7 CPC

having been satisfied, the trial Court was fully justified in rejecting the application made by the petitioner/first defendant for rejection of plaint.

Accordingly, the Civil Revision Petition fails and it is dismissed. The trial Court is directed to proceed with the trial on the issues framed and the

parties shall be at liberty to lead oral and documentary evidence in support of their contentions. No costs. Consequently, connected miscellaneous

petition is closed.