
(2011) 06 CAL CK 0019
In the Calcutta High Court
Case No : CO. No. 1961 of 2010

Christopher Housing Developers Pvt. Ltd.	APPELLANT
Vs	
Manjit Poddar	RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(2), Order 1 Rule 8(6), Order 2 Rule 2, Order 6 Rule 16

Citation : (2011) 4 CHN 152

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury, Saptangshu Basu, Raja Basu Chowdhury, Sourya Sadhan Bose and Abhijit Sarkar, for the Appellant; Kollal Basu, Debasish Sarkar and Nilanjan Pal, for the Respondent

Final Decision : Dismissed

Judgement

Soumen Sen, J.—The exercise of discretion by the learned Assistant District Judge (Senior Division), Sealdah in refusing the application filed by the defendant No.1 for rejection of plaint is the subject-matter of challenge in this revisional application.

2. The opposite party No.1/plaintiff is a purchaser of a flat at Premises No.98, Christopher Road, Kolkata- 700046.

3. In or about 17th of November, 2008 the plaintiff instituted a suit before the learned Civil Judge (Senior Division) at Sealdah against the petitioner/ opposite party No.1 and others, alleging various unlawful acts committed by the defendant Nos.1, 2 and 3.

4. The land in question appears to have been purchased by the defendant No.2 and other 53 companies of which the defendant No.2 is the constituted attorney in a proceeding before this Hon'ble High Court being E.O. Suit No.26 of 1989 and by virtue of such purchase, the said defendants became owners of the said

property.

5. The said defendant No.2 for self and as constituted attorney of 53 other companies subsequently entered into an agreement for sale with as many as 624 persons for the purpose of transferring and selling the proportionate interest in the land in favour of such 624 persons. Thereafter, the defendant No.1 entered into several agreements for construction of flats on the said land in favour of respective buyers and/or land owners on the specific understanding that the said defendant No.1 would construct self-contained apartments with all amenities and facilities as required by respect flat owners and in whose favour the land was sold by the defendant No.2.

6. The plaintiff claims that the defendant No.1 and 2 sold out and/or intended to sell the entire land of the said premises to 624 persons including the plaintiff and upon sale of the entire proportionate share in land, the defendant Nos.1 and 2 had put such 624 persons in possession including the plaintiff in entirety and in respect of the entire land consisting of 5459 acres equivalent to 22092 square metres at premises No.98, Christopher Road, Kolkata 700046.

7. All the flats within the said premises and all other portions in the said premises, namely, the community hall, children park, badminton Court, health center, etc, were constructed by the defendant No.1 as an agent and a Contractor for and on behalf of 624 land owners including the plaintiff.

8. The plaintiff claims that by reason of the aforesaid agreement, the defendant No.2 and 53 companies lost their right, title, interest and/or any claim of possession over and in respect of the entirety of the land and the buildings to be constructed. The defendant No.1 constructed 18 buildings consisting of 624 self-contained flats as an agent and a Contractor appointed by such 624 land owners including the plaintiff at the cost of such land owners and the defendant No.1 does not have any right, title or interest over any portion of the said premises or in relation to any common portion or common facilities including community hall, children park, parking space etc, in short, the plaintiff along with 623 persons are the co-owners of the entire land with and in possession of their respective flats and/or apartments that were constructed on the said land.

9. It was further claimed that the said defendant companies illegally and without authority of law obtained sanction plan in respect of open and covered areas and car parking space in the common area that is below the cantilever thereby seriously prejudicing the right of the said flat owners to enjoy such space and areas as co-owners.

10. The plaintiff further claims that on the basis of such illegal building plan, the said defendants unlawfully and illegally sold out without the knowledge and consent of the flat owners, some open space and covered areas of the common area to some third parties and had made unlawful gain.

11. The said defendants although did not have any right and interest over any

portion of the suit property are illegally trying to dispose of the open and covered spaces within the said premises as "car parking spaces" to individual persons/ organizations and are also seeking to allot such portions to third parties contrary to the existing agreements with the individual flat owners.

12. The plaintiff alleged that the defendant Nos.1 and 2 in connivance and conspiracy with M/s. Scientific Indian Glass Company Ltd., the defendant No.3 illegally and wrongfully obtained sanction of one building plan dated 8th April, 2004 in the name of M/s. Scientific Indian Glass Company Ltd., and the said defendant No.3 also constructed the building comprising of G+11 Stories by utilizing the open and covered car parking space in the common areas and upon demolition of the children park, community park etc,. The defendants have also wrongfully and illegally obtained sanction of covered parking space which encroached upon common portion of the said premises and open car parking space was allowed to be covered up without the consent of the 624 land owners. In fact, the defendant Nos.1, 2 and 3 have lost all their right, title, interest in respect of the said premises upon disposal of the entire land in favour of the plaintiff and 623 other land owners and the same would also be evident from the order of the Hon'ble High Court which records that such land was sold in favour of defendant No.2 and 53 other companies which the said defendants have subsequently sold in favour of the plaintiff and other 623 land and apartment owners.

13. The plaintiff further alleged that the said defendants are seeking to sell and/or allow and/or transfer car parking space and other portion which are earmarked as common space to third parties. The said defendants are also interfering with the right of the plaintiff and other land owners to enjoy the said properties as owners thereof including their right to enjoy the roof.

14. The plaintiff claims that the said defendants have manipulated records and obtained some building plan surreptitiously and are seeking to make illegal construction on the basis of such plan. It is alleged that the cause of action of the suit arose on 8th April, 2004 and again on 29th January, 2007 and lastly on 30th August, 2008 when the said defendant Nos.1, 2 and 3 demanded maintenance charges in respect of the flats.

15. The plaintiff claims that inasmuch as the said demand is illegal and the said defendants were acting illegally and wrongfully and interfering with the possession and enjoyment of the plaintiff and 623 land and apartment owners, the plaintiff instituted a suit being Title Suit No. 138 of 2008 in the Court of the learned Civil Judge (Senior Division) at Sealdah.

16. With such and other allegations, the aforesaid suit was instituted in which the plaintiff claimed declaratory reliefs as also permanent injunction against the said defendants. The plaintiff claims that the said suit was filed in a representative capacity and with the filing of the plaint an application was filed under Order 1 Rule 8 of the Code of Civil Procedure.

17. However, no formal order was passed in respect of the said application. I shall deal with that issue a little later.

18. The petitioner became aware of the institution of the said proceeding on 19th November, 2008 when they received a communication from the plaintiff forwarding a copy of the plaint.

19. It appears that an application under Order 7 Rule 11 read with section 151 of the Code of Civil Procedure, 1908 was filed thereafter only by the defendant No.1. The said application was rejected by the learned Trial Judge.

20. Although in the application under Order 7 Rule 11 various points were taken, during the course of submission, Mr. S.P. Roy Chowdhury, the learned Senior Counsel appearing on behalf of the petitioner fairly submitted that he would assail the said judgment of the Trial Judge only on two grounds, namely,

(i) The learned Court committed irregularity in conducting the said proceeding and in concluding that the learned Court had impliedly granted permission and/or leave to the plaintiff to proceed with the suit in its representative character although there is nothing to show that any such express leave was granted to the plaintiff.

(ii) Inasmuch as a receiver was appointed over and in respect of the suit property in an earlier proceeding it was incumbent upon the plaintiff to obtain prior leave from the Court appointing such receiver and the plaintiff having not obtained any such leave, no suit or proceeding could have been continued by the plaintiff against the defendants.

21. Such submission is appreciated since it is well-settled principle of law that in an application for demurrer in the nature of Order 7 Rule 11 the statements made in the plaint are only to be looked into for the purpose of ascertaining whether the plaint must fail on all or any of the grounds as mentioned in Order 7 Rule 11 of the Code of Civil Procedure.

22. Now, let us examine the points that were taken by Mr. Roy Chowdhury for the purpose of rejection of the said plaint.

23. It appears from the order under challenge that the Court below had taken note of the fact that an application under Order 1 Rule 8 is on record and was filed on 18th of November, 2008. The relevant observation of the Trial Court is reproduced hereinbelow:

It appears to me that it is true that a petition under Order 1 Rule 8 of CPC was filed on 18th November, 2008 by the plaintiff. So, the plaintiff has duly performed his duty and in the said petition, the plaintiff has prayed, "To accord permission to the plaintiff to sue the instant suit on her behalf and also on behalf 623 numerous persons since all such persons have the same interest in the result of the suit.

24. It further appears on 18th November, 2008 the Court below was pleased to

grant an order of injunction in favour of the plaintiff which extends benefit to all such numerous persons. The learned Court below noticed that there was no specific order passed by the Court regarding the petition filed under Order 1 Rule 8 of the Code of Civil Procedure, although a petition was filed on 18th November, 2008. The learned Court while passing the order of injunction was under an impression that a leave already had been granted under Order 1 Rule 8 and on the basis of such impression passed such interim order. It appears that the Court was alive to the fact that the Court was in fact considering a representative suit and the said Court had proceeded on the basis as if such leave, in fact, already had been granted. It was on the basis of such impression, the Court below made the following observation:

From the record, as it reveals that the injunction order in favour of the plaintiff has been passed by this Court, so, the Court has impliedly allowed the petition under Order 1 Rule 8 of CPC and allowed the plaintiff or gave permission to the plaintiff to represent on behalf of other numerous persons.

25. It appears that in coming to such conclusion the Court has relied upon the judgment of the Patna High Court reported in Ramrup Pandey Vs. Kamla Prasad Sinha and Another, . The learned Single Judge of the Patna High Court after considering Order 1 Rule 8 made the following observation:

7. For the reasons of public policy and preventing multiplicity of suits Order 1, Rule 8 of the CPC provides, inter alia, that where there are numerous persons having the same interest in one suit, one or more of such persons may with permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. Rule 8 (2) of Order 1, provides that the Court shall in every case where permission or direction is given under sub-rule (1) give notice of the institution of the suit to all persons so interested to have their say, if any, in the litigation. Rule 8(6) provides that a decree passed in a suit under this rule shall be binding on all persons on whose behalf or for whose benefit the suit is instituted or defended is the case may be. Order 1 Rule 8 (1) (a) while necessitating the permission of the Court does not lay down that such permission must be recorded in writing. Reasonably enough in relevant circumstances and on appropriate materials the Court can infer that the permission of the Court was given impliedly. This apart any irregularity on this score will be curable under the provisions of section 99 of the Code of Civil Procedure. Initially the plaintiff filed the plaint in his individual capacity. Subsequently, however, he filed a petition for amendment of the plaint. The amendment sought for was that the plaintiff be given permission to sue in representative capacity and that the Rasta be declared to be in use of the public by virtue of the right of easement acquired. This prayer for amendment, as stated above, was heard on 27th November, 1969 and the prayer was allowed on payment of cost which was received by the learned Counsel for the defendants. The plaint was amended, accordingly, and then notice as required in Order 1, Rule 8(2) was ordered to be issued. The order sheet indicates that the said

notice was duly served. Amendment of the plaint necessitated an opportunity to the defendants to file additional written statement. The defendants got this opportunity and filed written statement. Issues framed earlier needed recast and Paragraph 4 of the Trial Court judgement shows that issues were recast at the instance of the defendants.

Learned Counsel for the appellant relied on a Single Bench decision of Allahabad High Court reported in Smt. Munni Devi and Others Vs. Satgur Dayal Tandon and Others, wherein it was held that permission of the Court is an essential condition for maintaining a suit in a representative capacity and it is only when such leave is granted that the Court shall issue notice that such a suit has been instituted. Granting of permission by the Court is no doubt necessary but the question is whether such permission should be expressly given in writing or in appropriate circumstances the permission should be deemed to have been given impliedly. This decision does not say that for want of permission unless it is given specifically in writing the suit must fail. This apart notice having been issued in that case mainly to invite objections from the general public as to the prayer of the plaintiff for suing in a representative capacity being allowed, the facts of this case are manifestly distinguishable from the facts of the instant case."

"8. Learned Counsel for the respondents relied on a decision of the Bombay High Court reported in Mukaremdas Mannudas and Others Vs. Chhagan Kisan Bhawasar and Others, wherein it was held that there need not be a formal order on record for permission to sue in representative capacity under Order 1, Rule 8 and the permission can be inferred where the plaintiffs' prayer that they should be allowed to sue in a representative capacity under Order 1, Rule 8 is granted by the Court. In such circumstances the lower appellate Court was right in concluding that the Trial Court will be deemed to have accorded permission sought for under Order 1 Rule 8 impliedly. This contention of Shri Dwivedi must, therefore, fail and the suit is held to be maintainable.

26. The learned Court below has also relied upon the decisions reported in Sri Sri Nitai Gour Radheshyam Vs. Harekrishna Adhikari and Others, for the purpose of arriving at the conclusion that the permission under Order 1 Rule 8 could be granted even after the filing of the suit and even at the appellate stage and sanction of Court can be obtained even after institution of the suit.

27. In my view, when the Court records that the Court was conscious of the true nature and character of the suit and was not in doubt that the suit really is a representative suit and had proceeded accordingly, the plea of Order 1, Rule 8 as a point of demurrer to non-suit the plaintiff, could not and does not arise and even if a plea of Order 1 Rule 8 fails, the individual cause of action of the plaintiff would always remain.

28. Mr. Roy Chowdhury had relied upon the decision reported in 1993 (1) CLJ 279 (The Calcutta Swimming Club & Anr. vs. Deokinandan Bubna) and urged that the Hon'ble Division Bench has noticed the mandatory requirement of Order 1

Rule 8. The relevant portion of the said judgment has relied upon Mr. Roy Chowdhury is reproduced hereinbelow:

35. We are quite conscious of the position that the provisions of Order 1 Rule 8 applied only if (i) the parties are numerous, (ii) have the same interest and (iii) the necessary permission of the Court is obtained or a direction under Clause (B) of sub-rule (1) is given and notice under sub-rule (2) is given. The notice is given by the Court though at the plaintiffs expense but the provision as to notice is mandatory. The provisions of Order 1 Rule 8 have to be strictly complied with. More so if it is a case of an unregistered society, no one member can sue alone if he has not filed the suit on his own behalf but on behalf of other members. The proper course is to obtain permission before the suit is instituted, but if that is not done, the rule does not forbid leave being granted afterwards. Permission under this rule may be granted even after the institution of the suit and even at the appellate stage by allowing an amendment, if such amendment does not materially change the nature of the suit. It has been consistently held in various decisions that the rule is mandatory and that failure to comply with its requirements cannot be condoned u/s 99, nevertheless if the suit is laid in the representative character, leave could be granted under this rule even at a later stage, but still then all the formalities prescribed in the rule should be observed.

29. In the aforesaid case two suits were filed in the City Civil Court, one by Sri Deokinandan Bubna, a suspended member of the Calcutta Swimming Club and the other one by Vikrant Matta.

30. The suit filed by Vikrant Matta, was a subsequent suit in which he filed an application under Order 1 Rule 8. The learned Registrar directed the application to be placed before the 7th Bench. It was found that the application under Order 1 Rule 8 CPC was never moved and no leave to sue in a representative capacity was granted. Yet, the learned Trial Judge passed an order of temporary injunction on 11th September, 1992. The said suit was subsequently withdrawn on 16th September, 1992 by Vikrant Matta. On the same day Rabindra Nath Mukherjee filed an application in the said suit to be added as a party. On 17th September, 1992, the learned Judge, 7th Bench passed an order adding Rabindra Nath Mukherjee as a co-plaintiff in the suit while allowing Vikrant Matta to withdraw the suit and accordingly the name of Vikrant Matta was deleted from the cause title. It was against this background that Rabindra Nath Mukherjee filed a separate suit in his individual name being Title Suit No. 1934 of 1992.

31. The main contention raised by the appellants in the said appeals is to the effect that while no leave was granted under Order 1 Rule 8 of the CPC for both those two suits instituted by Rabindra Nath Mukherjee and Deokinandan Bubna since the Calcutta Swimming Club is an unregistered society, the suits were not maintainable at all without such leave. It was in that context, the Hon"ble Division Bench considered Order 1 Rule 8 of the Code of Civil Procedure.

32. In this case although there was no formal order but the Trial Court did notice

that the suit was a representative suit and proceeded accordingly. Moreover, the defendant No.1 is a company, accordingly the plea that was available to Calcutta Swimming Club as unregistered society is not available to the said defendant No.1/petitioner. Furthermore, it is not an action against the defendant which is an unregistered society nor the plaintiff herein is claiming any right as member of a unregistered society and/or body.

33. However, I agree with Mr. Roy Chowdhury that the Court below ought to have been more careful while dealing with the application under Order 1 Rule 8 since the said application was filed and the Court below ought to have recorded a formal order granting and/or refusing such application otherwise it would lead to as it has presently to unnecessary complications. It has to be kept in mind that to record an order under Order 1 Rule 8 is the duty of the Court and the intention of the Court can always be gathered from the record of the proceedings of the Court. When the learned Court records that the said Court has proceeded on such clear impression that the said Court had, in fact, granted such leave which it appears due to inadvertence was not recorded formally, it would be unfair to hold that no leave was granted. It could not be said that such leave cannot be granted subsequently or that the Court cannot come to a finding that such leave, in fact, has been granted impliedly. It can also be looked from another perspective. Since it was a duty of the Court to allow or disallow such an application and the Court having formed an opinion that such leave in fact should have been granted and was granted although not recorded it cannot be said that formal non-recording in such circumstance would be as fatal to call for dismissal of a plaint. It is well-settled that mistake of a Court would not prejudice anyone and (13 CLJ 467, Madan Gopal Daga Vs. Rallis, India Ltd., Now that the Court has formally recorded that there was an implied leave it is expected that the Court would forthwith give other incidental directions, namely, issuance of notice etc. and direct the plaintiff to comply such directions as early as possible.

34. In short, the argument of Mr. Roy Chowdhury was that the said suit could not have been proceeded with at all without a formal leave under Order 1 Rule 8 of the Code of Civil Procedure. Failure to obtain such leave, according to him, would constitute a legal bar to proceed with the suit.

35. As I have indicated hereinabove I am unable to accept the said argument. Moreover even if for argument's sake the individual cause of action of the plaintiff would still survive and the entire suit would not fail. Mr. Roy Chowdhury has drawn my attention to Order 7 Rule 11 of the CPC and argued that the suit is barred by law in absence of leave under Order 1 Rule 8 of CPC.

36. The objection as to the rejection of plaint is in the nature of demurrer. The circumstances under which a plaint can be rejected in addition to the cases mentioned in Order 7 Rule 11 are vexatious and an abuse of process.

37. The same has been considered by the Hon'ble Supreme Court in Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and

Others, in the manner following:

11. Under Order 7 Rule 11 of the Code, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient Court-fee is paid and the additional Court-fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order 7 Rule 11 of the Code would be on consideration of the principles laid down by this Court. In *T. Arivandandam Vs. T.V. Satyapal and Another*, this Court has held that if on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In *Roop Lal Sathi Vs. Nachhattar Singh*, this Court has held that where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order 7 Rule 11 of the Code, but the rules does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order 6 Rule 16 to strike out the paragraphs in the absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the Court in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order 7 Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In *Saleem Bhai and Others Vs. State of Maharashtra and Others*, , this Court has held that the Trial Court can exercise its powers under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are" germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property Vs. State Bank of India Staff Association*, , this Court has culled the legal ambit of Rule 11 of Order 7 of the Code in these words: (SCC p.516, para 19)

"19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or

subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

38. Incidentally, the said decision also considered the celebrated decision of the Hon"ble Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, which was followed in a number of subsequent decisions where the Hon"ble Supreme Court called upon all Courts to "nip it in the bud" vexatious and meritless litigations.

39. In support of the aforesaid contention, Mr. Roy Chowdhury has relied upon N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LR's. and Others, paragraph 16 and 17 which is reproduced hereinbelow:

16. The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any "cause of action". In our view, the Trial Court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of the Specific Relief Act as also under Order 2 Rule 2 of the Code of Civil Procedure."

"17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T.

Arivandandam Vs. T.V. Satyapal and Another,

"The Trial Court must remember that if on a meaningful - not formal -reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them.

40. At this stage, it cannot be said that on a meaningful reading of the plaint it can be said that the said claim is vexatious or meritless or an abuse of the process of law. The Court in considering such an application is required to read the entire plaint as a whole and if on a meaningful, not formal reading of the plaint, it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue such power can be exercised for dismissal of the plaint.

41. In the plaint, the plaintiff has elaborately detailed various wrongful acts alleged to have been committed by the defendants in relation to the plaintiff and 623 flat owners and has founded her cause of action on the basis of such alleged illegal acts perpetrated by the said defendants which according to the plaintiff has seriously affected the valuable right, title, interest and enjoyment of the suit property by the plaintiff and other co-owners, namely, 623 land and apartment owners. At this stage it is not required to find out the truth and/or falsity of the claim made by the plaintiff since the defendants can always file their written statement in controverting such allegations and these are matters which should stand to trial.

42. Now, I turn to the second objection raised by Mr. Roy Chowdhury. From the pleadings it is not clear in which proceeding a receiver was appointed. In the application under Order 7 Rule 11, the defendant/petitioner also did not disclose the order appointing receiver or the nature of function of the said receiver. While the plaintiff would simply contend that the receiver was there only to execute conveyance in favour of purchasers and nothing more, the defendant/petitioner would submit that the receiver has been appointed over the suit property. In the application under Order 7 Rule 11 no such ground was taken. However, it appears that before the learned Trial Court a point was urged that the suit could not proceed against the receiver without obtaining any prior permission from the Court. In that regard, the defendant had cited two decisions, namely, 59 CWN 487 and Everest Coal Company (P) Ltd. Vs. State of Bihar and Others,

43. It is not in doubt that although there is no requirement under the CPC to obtain any prior permission from the Court appointing a receiver before instituting any proceeding such leave was felt necessary by judicial

pronouncements on the ground of public policy. In this regard, the observation AIR 59 CWN 481 is reproduced hereinbelow:

The rule requiring leave to sue a receiver is not based on any statutory authority but had its origin or reasons on considerations of public policy (vide in this connection *Braja Bhusan Trigunait vs. Sris Chandra Tewari* (1) AIR 1918 Pat. 100 : S.C. 47 I.C. 719; vide also *Banku Behary Dey vs. Harendra Nath Mukherjee*, (2) [1910 (15) C.W.N. 54 at p 561. It is an ancient rule of salutary import which has for all practical purposes become a part of the law of the land. It has seldom been departed from in actual practice where actions of the receiver qua -receiver in relation to the properties in his charge are in question. The rule covers a wide field. Its application is not limited to suits, strictly so-called, but also extends to other legal proceedings (vide in this connection *Miller vs. Ram Ranjan Chuckerbutly*, (3) ILR 10 Cal. 1014; *A.M. Dunne vs. Kumar Chandra Kissore*, (4) ILR 30 Cal. 593; *W.R. Pink vs. The Corporation of Calcutta*, (5) ILR 30 Cal. 721; *Santok Chand vs. Sukan Chand Mannawat*, (6) ILR 46 Cal. 432; *Mrs. Levina Ashton vs. Madhabmoni Das*, (7) [1910 (14) CWN 560]; *Jotindra Nath Choudhury vs. Sarfaraj Mia*, (8) [1910 (14) C.W.N. 6531; *Banku Behary Dey vs. Harendra Nath Mukherjee*, (2) [1910 (15) CWN 541 and *Sarat Chandra Banerjee vs. Apurba Krishna Roy*, (9) [1911 (15) CWN 925]. The basic principle on which the rule is founded is unexceptionable and, as the appointing Court had a judicial discretion in the matter of granting such leave, and as in practice such leave is readily granted in appropriate cases, the rule has very seldom worked any injustice. When the Court appoints a receiver over a particular property it is the Court which really takes charge of the same. The property remains in the custody and management of the Court - it does not strictly speaking rest in the receiver, where the appointment is, as in the present case, under Order 40, Rule of the Code [vide *Maharana Kunwar Vs. E.V. David and Others*, , (11) *Shyam Lal Gomatwala Vs. Nand Lal and Others*, vide also in this connection *Haji Cassim Mamooji vs. KB. Dutt*, (12) 19 CWN 45 and the receiver merely acts as the Court's officer in the matter of such management. It is only proper, therefore, and, indeed it is imperative for the maintenance of the dignity of the Courts and respect for the judiciary, so essential for a stable administration that the property or any rights therein should not be allowed to be affected or interfered with without the leave of the said appointing Court and the persons desiring to take any step which might affect the said property or any rights therein, should be obliged to obtain that Court's leave in that behalf. Such leave, as we have said above, is freely granted in appropriate cases. Its requirement, therefore, places no obstacle in the way of justice; on the other hand, it is clearly conducive to a sound judicial administration avoiding chaos and confusion which might otherwise ensue. It seems to us, therefore, that on principle the rule should have a wide application and as a proceeding for standardisation of rent may well affect the income or the payment to be made for occupation of the disputed property and may thus conceivably affect the said property or to be more precise rights and liabilities of the parties in respect thereof in the matter of rent, there is no

reason why the rule should not apply to such a proceeding.

44. The requirement of such leave from the Court appointing a receiver was also considered by the Hon''ble Supreme Court in *Kanhaiyalal Vs. D.R. Banaji and Others*, . The Hon''ble in the said decision held that if any Court which is holding the property in custodia legis through a receiver or otherwise, is moved to grant permission, for taking legal proceedings in respect of that property, the Court ordinarily would grant such permission if considerations of justice require it. Courts of justice, therefore, would not be a party to any interference with that sound rule. On the other hand, all Courts of justice would be only too anxious to see that property in custodia legis is not subjected to uncontrolled attack, while, at the same time, protecting the rights of all persons who may have claims to the property.

45. Although there was no pleading with regard to the appointment of the receiver before the Court below but in the revisional application, the petitioner/defendant No.1 made the following averment:

6. The petitioner states that it will not be out of place to mention here that in terms of a judgment and decree dated May 16, 1989 passed by the Hon''ble Justice U.C. Banerjee (as His Lordship the then was), Sri Promod Kumar Bagaria, learned Advocate was appointed receiver in respect of the suit premises. In the said judgment and decree it has been specifically mentioned that the said learned Receiver will be in-charge of the suit property till the property is conveyed in favour of the intending purchaser and the dues of the bank is liquidated. The said learned Receiver is still continuing to discharge his functions and has not been discharged by the Hon''ble High Court at Calcutta. Your petitioner craves leave to produce a copy of the judgment and decree dated May 16, 1989 passed by this Hon''ble Court at the time of hearing.

46. In this case it appears that the agreements were all executed by the receiver in favour of different purchasers. If the receiver has already discharged his function, a mere continuation of the receiver in such a situation cannot be equated with a fact situation where the receiver is in reality "a custodia legis". Since the aforesaid point was never raised before the Court below, the Court below had no occasion to consider such plea. In any event, the plaintiff has said that they were not claiming any relief against the receiver. It does not appear that the receiver is exercising any actual control over the property. There is no allegation against the receiver in the plaint. The proper test would be to ascertain whether it is essential to sue the receiver and if the answer is in the affirmative, prior leave would be required.

47. In my mind in determining as to whether failure to obtain a prior leave to sue a receiver would be fatal or not the nature and scope of the order appointing a receiver is of paramount importance. Since the petitioner/ defendant No.1 had raised such a plea it was for the said defendant to disclose all relevant facts including the nature of the order appointing a receiver. It is not enough simply to

say that a receiver is over the property. If the receiver is only to supervise some work or to execute conveyance, mere failure to obtain leave to sue such receiver prior to institution of the suit in appropriate case to my mind would not be fatal. However, it would have been proper for the plaintiff once the plaintiff had made the receiver a defendant in the suit to indicate in the plaint, the reason for making receiver a party. The plaintiff would urge that the deletion of the receiver would not non-suit the plaintiff and no relief is claimed against the receiver. However, there are insufficient materials to hold that such prior leave would be essential in this case.

48. Since the aforesaid pleading was not made before the Court below I would not permit the petitioner to raise such plea in this revisional application or to rely on any fresh material. If such points were raised before the Court below and it was felt that such leave was necessary on scrutiny of record and/or material produced before the Trial Court the plaintiff could have taken appropriate steps and to hold at this stage with such insufficient material that the suit must fail since no leave was obtained before proceeding with the suit would be unfair and would cause injustice to the plaintiff.

49. For all these reasons, in my view, the revisional application must fail and the same is accordingly dismissed, however, without any order as to costs.