

**(2018) 10 BOM CK 0035**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 2833 Of 2018**

Mr. Nanji Sunderji Sejpal

APPELLANT

Vs

Vithuram Shivilal Lahoti Denagi Trust Through Its Trustee And  
Ors.

RESPONDENT

**Date of Decision :** 12-10-2018

**Acts Referred:**

Transfer of Property Act, 1882 — Section 106  
Code of Civil Procedure, 1908 — Order 7 Rule 11

**Citation :** (2018) 10 BOM CK 0035

**Hon'ble Judges :** M. S. Sonak, J

**Bench :** Single Bench

**Advocate :** Girish G. Togani

**Final Decision :** Dismissed

## Judgement

1. Heard Mr. Girish Togani, learned Counsel for the Petitioner.
2. The challenge in this petition is to the order dated 11th April, 2017Â made by the learned trial Judge dismissing the petitioner's application under Order VII Rule 11(a) of the Code of Civil Procedure (CPC).
3. Mr. Togani, the learned Counsel for the Petitioner submits that this is a case where the plaint discloses no cause of action. By way of elaboration, Mr. Togani submits that the suit seeking the petitioner's eviction from the suit premises is not maintainable because the petitioner is admittedly lessee in respect of the suit premises. He submits that there is a clause in the leaseÂdeed for renewal the lease term. In pursuance of such clause, the petitioner has in fact exercised the option for renewal. He relies onÂ State of U.P. and others Vs. Lalji Tandon (Dead) â?" (2004) 1 SCC 1 to contend that where a covenant for renewal exists, its exercise is an unilateral act

of the lessee, and the consent of the lessor is unnecessary. Mr.

Togani submits that these factors warrant the rejection of the plaint on the ground that it fails to disclose any cause of action.

4. Mr. Togani further submits that there is no proper termination of the lease in the present case. He submits that so called notice of termination is not in consonance with the provisions of Section 106 of the Transfer of Property Act. He submits that this is yet another ground for rejection of the plaint for failure to disclose cause of action.

5. Mr. Togani submits that the lease deed in the present case was executed by an individual Vithuram Shivilal Lahoti (lessor). However the suit has been instituted by a trust. There is no cause of action for the trust to institute a suit of the present nature and therefore the plaint warrants rejection by resort to the provisions of the Order VII Rule 11(a) of the CPC.

6. Finally, Mr. Togani criticised the impugned order by submitting that the learned trial Judge has unnecessarily gone into the issues of prior approval from the Charity Commissioner or the failure of all the trustees to institute the suit, when these were not the grounds on which the petitioner had sought for the rejection of the plaint. He submits that the learned trial Judge has failed to appreciate the case of the petitioner in proper perspective and consequently there is jurisdictional error in not rejecting the plaint under Order VII Rule 11(a) of the CPC.

7. The impugned order has been made by the learned trial Judge below Exhibit 51, in which, the petitioner (original Defendant No.1) had applied for the following reliefs :

10) It is therefore prayed that

(a) Hon'ble court may be pleased to frame preliminary issue, as to whether the suit is maintainable at law and is barred by law:

(b) Hon'ble court may be pleased to dismiss the suit or return the plaint, as the Hon'ble court deems fit and proper, in the interest of justice and oblige.

(c) Any other relief as the Hon'ble court deems fit and proper may be granted.

8. The learned trial Judge, at paragraph 4 of the impugned order has recorded that the Advocate for the petitioner (Defendant No.1) had invoked the provisions of Order VII Rule 11 of the CPC in order to contend that the plaint discloses no cause of action. The contentions raised by the Advocate

for the petitioner have been noted in paragraph 4 of the impugned order. However, most of such contentions are now disowned by the learned counsel for the petitioner before this Court.

9. Insofar as the contentions which are now raised by the learned counsel for the petitioner are concerned, none of them support the petitioner's

contention that the plaint in the present case fails to disclose any cause of action. Most of the contentions seem to suggest the plaintiff in the suit has

no cause of action to institute the suit. Now, this is quite different and distinct from the contention that the plaint fails to disclose any cause of action.

Unless the petitioner makes out the case that the plaint in the present case fails to disclose cause of action, there is no question of rejection of the

plaint in the exercise of powers conferred by Order VII Rule 11(a) of the CPC.

10. From the perusal of the plaint, it is quite clear that cause of action has been disclosed. Whether the averments made in the plaint in support of such

cause of action are true or not is a matter which will have to be decided after the conclusion of the trial. Such matters cannot be gone into at the stage

of deciding any application under Order VII Rule 11 of the CPC. Most of the contentions raised by the learned counsel for the petitioner constitute the

defense of the petitioner to the suit as instituted. At the stage of deciding application under Order VII Rule 11 of the CPC, the defense raised by the

defendant cannot be looked into. The petitioner has already filed written statement in the matter in which the defenses now urged by the learned

counsel for the petitioner, have been substantially urged.

11. The contentions raised by and on behalf of the petitioner seem to suggest that there is no cause of action for instituting the suit. As noted earlier,

this is quite different and distinct from alleging and establishing that there is a failure to disclose cause of action in the plaint.

12. In *State of Orissa Vs. Klockner and Company and others* â?" A.I.R. 1996 SC 2140, the Apex Court approved the view taken by the learned

Single Judge of the Orissa High Court interfering with the order made by the learned trial Judge rejecting a plaint under Order VII Rule 11(a) of the

CPC. The learned Single Judge noted that the learned trial Judge had failed to maintain the distinction between the plea that there was no cause of

action for the suit and the plea that the plaint does not disclose a cause of action.

13. In *Santi Ranjan Das Gupta Vs. Dasuram Mirzamal Firm* â?" AIR 1957 ASSAM

49 the Division Bench of the Assam High Court has drawn

distinction between 'no cause of action for the suit' and 'failure to disclose cause of action'. The Division Bench has observed that the plaintiff may

disclose cause of action which may not be sufficient to sustain the suit. The suit in such case would be liable to dismissal. However, the plaintiff in

such a case cannot be rejected by resort to Order VII Rule 11(a) of the CPC.

14. In *British Airways Vs. Art Works Export Ltd. and another* AIR 1986 CALCUTTA 120 the Division Bench of the Calcutta High Court

declined to reject the plaintiff based on the plea that there was no cause of action for the plaintiff to institute the suit. In this case also the Division Bench

made a distinction between the 'absence of cause of action' and the 'failure to disclose cause of action'. In the former case the suit may be dismissed

upon conclusion of the trial. However, it is only in the later case that a plaintiff can be rejected.

15. In *Industrial Development Bank of India Vs. Mrs. G.C. Kamala and others* 2009 AIHC 1611 the learned Single Judge of the Madras High

Court has held that as long as the plaintiff discloses a cause of action, the same cannot be rejected by resort to Order VII Rule 11(a) of the CPC. The

correctness or falsity of the cause of action projected in the suit cannot be gone into while dealing with an application for rejection of plaintiff.

16. Most of the contentions raised by the learned Counsel for the petitioner seem to suggest that the rejection of the plaintiff was sought for on the

ground that the plaintiff has no cause of action to institute the suit. As noted earlier this is not a good ground for rejection of the plaintiff by resort to

Order VII Rule 11 of the CPC. Besides as noted earlier, there is no question to advert to the defense of the petitioner in the suit at the stage of

dealing with an application Order VII Rule 11(a) of the CPC.

17. For all the aforesaid reasons it cannot be said that there is any failure on the part of the learned trial Judge to exercise jurisdiction. Accordingly,

this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

18. It is however clarified that observations in the impugned order for that matter the present order are only in the context of considering petitioner's

application under Order VII Rule 11 of the CPC. Therefore, none of these observations shall in any manner prejudice the petitioner's defense in the

suit on merits. Accordingly, all contentions of all parties on the merits of the suit are left open for determination by the learned trial Judge at the appropriate stage.