

(1994) 04 CAL CK 0019

In the Calcutta High Court

Case No : Appeal No. 116 of 1988 and Suit No. 595 of 1987

Nandalal N. Verma and Co. Ltd.

APPELLANT

Vs

Alliance Mills (Leasee) Pvt. Ltd.

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 7 Rule 11
Contract Act, 1872 — Section 230

Citation : (1994) 2 CALLT 82 : 99 CWN 433

Hon'ble Judges : Prabir Kumar Majumdar, J; Bijitendra Mohan Mitra, J

Bench : Division Bench

Advocate : P.K. Roy and R.L. Gaggar, for the Appellant; J.P. Tibrewal, for the Respondent

Final Decision : Allowed

Judgement

Bijitendra Mohan Mitra, J.—This appeal is directed against an order dated 18th January, 1988, passed by the learned Trial Judge dismissing an application under Order 7 Rule 11 of the Code of Civil Procedure. An application in nature of Order 7 Rule 11 of the CPC has been pressed for hearing by one Nandalal N. Verma & Co. Ltd. the defendant No. 2 in the suit praying that suit be permanently stayed against them or alternatively the name of the Defendant No. 2 as aforesaid be deleted from the suit register. The case of the petitioner being the Defendant No. 2 in the connected suit in substance is that the plaint does not disclose any cause of action against the petitioner.

2. The Defendant No. 2 was and acted as an agent of the Defendant No. 1. According to the petitioner the plaintiff has stated in the plaint in most unambiguous terms that petitioner was acting as an agent of the Defendant No. 1 and as such the principal referred to in the plaint has been sued as Defendant No. 1. According to the petitioner the suit as against the petitioner, being the Defendant No. 2 is barred under the provisions of Section 230 of the Indian Contract Act, in so far as the defendant No. 2 is concerned.

3. According to the plaintiff in paragraph 4 of the connected plaint, the contracts being referred to have been sought to be treated as part of the plaint. From the same as per the case of the plaintiff, it will appear that the Defendant No. 2 entered into the said contracts in its firm name as a purchaser. The Defendant No. 2 agreed to purchase from the plaintiff diverse quantities of goods at the rates mentioned in the contract. So according to the plaintiff the defendant No. 2 was in any event personally entitled to enforce the same and/or personally bound by it.

4. Mr. P. K. Roy, the learned Counsel, appearing on behalf of the appellant submitted that the plaintiff has pleaded in the plaint that the Defendant No. 2 was the agent of the Defendant No. 1. Irrespective of the contracts referred to in the plaint the plaintiff has accepted the Defendant No. 2 as the agent of the Defendant No. 1 and the jural character has been ascribed to the Defendant No. 2 as per plaint case. In view of the juristic character ascribed to the Defendant No. 2 as agent of the Defendant No. 1, according to Mr. Roy by virtue of Section 230 of the Contract Act, the plaint does not disclose any cause of action against the said Defendant No. 2. Section 230 of the Contract Act reads as follows :

"230. Agent cannot personally enforce, not be bound by, contracts on behalf of principal. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of the principal, nor is he personally bound by him."

Section 230 of the Contract Act is intended to cover the case where the agent, though an agent cannot be made personally liable.

5. Mr. Roy further submitted that veil of the juristic character of the Defendant No. 2 is lifted by the plaintiff as per plaintiff's case in the plaint. Mr. Roy further stated that for the purpose of disposal of a petition under Order 7 Rule 11 of the CPC only the material averments contained in the plaint are required to be looked into: and inferences are thereafter required to be drawn from the same. It is at the stage of pleading when Order 7 Rule 11 of the CPC comes into play. It is salient to make a reference that the pleading is an expression defined under the provision of Order 6 Rule 1 of the Code of Civil Procedure. Accordingly, the plaint is required to be read as a whole. Alternatively, the plaintiff has also made out a case that the defendants by their conduct held out the Defendant No. 2 as the Agent of the Defendant No. 1 in the matter of purchase of H.C. Cement bags from the plaintiff at Calcutta and the plaintiff relied on the said representation of the defendants and acted thereupon. There has been no challenge thrown in the plaint as to the locus standi of Defendant No. 2 in its capacity as agent of Defendant No. 1. The plaintiff in the instant case has clearly disclosed the name of the agent.

6. Mr. Tibrewal, appearing on behalf of the plaintiff has relied on a decision of a case of Abdul Karim Basma v. Gladys Murial Weekes and Ors. reported in 54 CWN 770. In the said reported decision the Privy Council held as follows:-

"An agent who enters into an agreement in his own name is contractually bound, though the other private party knew when the contract was made that he was acting as agent. The agreement in such an event did not cease to contain the names of the contracting parties and did not cease to satisfy the Statute of Frauds. Accordingly, the agent could sue on the agreement and so could the principal.....An agent who contract in his own name does not cease to be contractually bound, because it is proved that the other party knew when the contract was made that he was acting as an agent. So the agreement which is made in his name does not cease in that event to contain the names of the contracting parties, and therefore, does not cease to satisfy the statute. Their Lordships are satisfied that in the present case the terms of the agreement dated 29th November, are such that Mr. Wright was contractually bound, and, therefore, the agreement satisfies the Statute of Frauds. So, Mr. Wright could have sued on the agreement and if he could sue, so can his principal the applicant".

7. Mr. Tibrewal further derived inspiration from the definition of the pleading as pointed out by this Court in the CPC to impress that plaint is to be read as a whole and not in a piece-meal fashion. Further attention of the Court has been drawn to the salient pleading where the contracts were treated as part of the plaint and the present suit is in respect of the contracts as mentioned. The averments contained in the plaint of the connected suit, according to Mr. Tibrewal, are required to be read as a whole and preface of the pleading, as contained in the averments of the plaint should not be exclusively taken note of and contracts in question are required to be looked into. Mr. Tibrewal could not answer as to why an alternative case was not made out by the plaintiff by affixing the responsibility on the agent in independent capacity of fiduciary nature and thereby upgrading its status as that of independent party in question. The contracts according to Mr. Tibrewal would unmistakably show that the Defendant No. 2 figured as purchaser in the said transaction. Mr. Tibrewal even went so far as to suggest that, if there is patent irreconcilability in the pleading then Court can look into the contracts in question and can arrive at its own inference about the transaction, as well as; the locus standi of the Defendant No. 2 vis-a-vis the plaintiff. The same was strongly objected to by Mr. Roy and he said that Court cannot look into and arrive at its own inference by making out a third case, when plaintiff has treated the Defendant No. 2 as an agent of the Defendant No. 1. The averments particularly made in paragraph 5 of the plaint according to Mr. Roy the plaintiff cannot proceed against the Defendant No. 2 in view of specific bar of Section 230 of the Indian Contract and as there cannot be any cause of action against the Defendant No. 2, it cannot be proceeded with for the relief.

8. The learned Judge in coming to his conclusion has referred to the contract notes, wherein the plaintiff is a seller and the Defendant No. 2 is the purchaser. If, there is a patent dichotomy between the manifest pleadings and the nature of document relied upon and inspite of the said document, if the parties understand

each other as principal and agent and assert to that effect then the question, will arise as to whether, plaint of such nature will have disclosed the cause of action against the Defendant No. 2 and it is hit by the mischief flowing from the provisions of Order 7 Rule 1(a) of the Civil Procedure Code. The learned Judge has relied upon the stipulation of the contracts over looking the material averments and/or understanding of the plaint on the face of such contract. The learned Judge in the trial has also approached the case from the stand point of the Defendant No. 2 in his written statement which in our opinion cannot be looked into for proper disposal of a petition under Order 7 Rule 11 of the Code of Civil Procedure. The plaintiff is saddled with the liability of the onus of making out its case bereft of any ambiguity in respect of the cause of action pleaded against the defendant. The entire approach taken, appears to be vitiated by misplaced shifting of onus on Defendant No. 2 in its written statement and it is doubtful whether the case in question is capable of being looked into from the said perspective. If the terms of the agreement and/or contract stand superseded by the material averments averred by the plaintiff and in respect of the same, if the plaintiff has treated the Defendant No. 2 as the agent of the Defendant No. 1, then bar of Section 230 of the Contract Act flowing therefrom will creep its head. To enable the Court to reject a plaint on the ground that it does not disclose any cause of action it should look into plaint and nothing else. A reference may be made in this connection to the reported decision in 82 CWN Page 419 in the case of Indo Swiss Trading Co. and Ors. Appellant v. Ghatal Navigation and Ors. Respondents. The Supreme Court in the case of T. Arivandam v. T.V. Satyapal and Ors. reported in AIR 1979 SC 2421 has been pleased to hold that if on a meaningful and not formal reading of plaint it is manifestly vexatious and meritless in the sense of non-disclosure of a clear right to sue, the Trial Court should exercise powers under Order 7 Rule 11 of the Code, of Civil Procedure to take care to see that the ground mentioned therein is fulfilled.

9. It will appear from two Calcutta cases, namely, in the case of Mohammad Khalil v. Mahibud Ali reported in 52 CWN 812 and the case of Sreedam Chandra Bhur Vs. Tencori Mukherjee and Others, which followed Punjab High Court for the purpose of rejection of a claim and the ratio of law is distinctly formulated that the Court must confine its attention to the statements in the plaint itself and not to any other documents. The learned Judge in the present case at the stage of trial has looked into and embarked upon a scrutiny of the documents viz. the contracts and annexures appended to the plaint. On plain reading of Clause (a) of Order 7 Rule 11 of the CPC whereas plaint discloses a cause of action in respect of part of a claim against some of the defendants and in that event the names of the defendant against whom there is no cause of action as suit is barred by law has to be struck off and the suit is to be proceeded against other defendants. It is needless to reiterate the ratio of law of a Division Bench of this High Court reported in 82 CWN Page 419 (supra) and in view of that it appears that the learned Judge in the trial has committed an error in formation of his

opinion that an agent as well as principal can sue or to be sued on the basis of the contracts being annexures vide letters "A" to "G" of the plaint which cannot be looked into in supersession of categorical statement contained in the material averments of the plaint. Stipulations of the said contracts cannot supersede the material averment of the plaint nor can displace the understanding of the plaintiff and an assertion that Defendant No. 2 is an agent of Defendant No. 1. Order 7 Rule 11 of the CPC contemplates that plaint alone and the material averments contained therein are required to be looked into and not the written statement of the defendants. The formation of the opinion of the learned Judge that the material averments in the plaint are contrary to the terms of the contract notes is not sustainable in view of the settled ratio of law as indicated in the above noted decisions.

10. Accordingly, plaintiff cannot be allowed to proceed against Defendant No. 2 whose right to sue against the said defendants is specifically barred by Section 230 of the Indian Contract Act and name of the Defendant No. 2, is liable to be struck off from the plaint and the plaintiff can only proceed against the Defendant No. 1 in view of the rejection of the plaintiff's claim against Defendant No. 2 by embargo flowing from specific legal provision viz. Section 230 of the Contract Act which bars such suit against the defendant. The plaintiff cannot be allowed to proceed against the said defendant for the relief as its claim is hit by specific bar of Section 230 of the Contract Act.

11. Accordingly, the present Appeal is allowed and the Judgment of the Trial Court dated 15th January, 1988 passed in Suit No. 595 of 1987 is set aside as a result of which the application of the Defendant No. 2 against the plaintiff is allowed. There shall, however, be no order as to costs.

Prabir Kumar Majumdar, J.

12. I agree.