

(2024) 12 GUJ CK 0046

In the Gujarat High Court

Case No : Civil Revision Application No. 519 of 2019

Pathik Udayan Bhatt Versus

APPELLANT

Vs

M/s Shakti Infotech & Ors.

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 115, Order 7, Rule 11, Order 7, Rule 11(d)
Indian Partnership Act, 1932 — Section 69, 69(2)

Citation : (2024) 12 GUJ CK 0046

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Natasha Sutaria

Final Decision : Dismissed

Judgement

Divyesh A. Joshi, J

1. This Civil Revision Application filed under Section 115 of the Code of Civil Procedure, 1908 is arising out of the order 04.09.2019 passed by the learned 2nd Additional Civil Judge & Judicial Magistrate, First Class, Vadodara, whereby the application submitted by the applicant-original defendant under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short 'CPC') in the suit filed by the Respondents-original plaintiffs came to be rejected.

2. The facts emanating from the captioned Civil Revision Application are that the respondent No.1 herein is the partnership firm engaged in the business of sale of Cheque Book Printing Software/CTS Software as also working in the field of Annual Maintenance Contract of the said Softwares by way of AMC, and the respondent Nos.2 to 3 are its partners, who preferred the Regular Civil Suit No.600 of 2016 against the applicant herein, seeking declaration and permanent injunction against the use of Cheque Book Printing Softwares CTS Softwares, wherein they have claimed that the present applicant was earlier working and assisting in the respondent No.1-Partnership Firm as the Software Developer till

17.01.2016. Thereafter, the applicant disassociated himself with the said partnership firm on his own, and, therefore, the applicant no longer remains to be the associate of the respondent No.1-partnership firm. The respondents have also claimed in the suit that Cheque Book Printing Softwares/CTS Softwares are created by them and subsequently got it registered to prevent it from any infringement. In short, the said softwares are the registered softwares being used by the respondents since long. It is also alleged in the suit that the applicant herein was being paid on mutual agreed terms, i.e., based on installation of the said sold softwares, and during the applicant's work tenure with the respondent No.1-firm, he was made to understand by the respondents about the basic fundamentals of marketing of sale of their above mentioned properties as also taught him about how to carry on the AMC works for those sold out softwares which were installed at the different places. The same was done by the respondents because of the utmost good faith and confidence they had in the applicant.

3. It is also averred in the suit that the applicant has misused the above mentioned properties of the respondents at various Banks and Financial Institutions in the market without prior written consent and permission of the respondents herein. It is alleged in the said suit that the applicant herein was caught by the respondents for doing the illegal acts of cheating and spoiling the name of the respondents in the market. The respondents have claimed that the applicant himself had confessed through e-mail dated 29.09.2014 that he had directly sold out the software of the respondents without even obtaining their consent and permission. Thereafter, the applicant gave assurances vide several communications and e-mails that he would not again commit such type of illegality and irregularity, and upon such assurance being given by the applicant, he was again reinstated in the said firm by the respondents. Thereafter, the applicant, on his own, left the respondent-Firm. However, after some time, it came to the knowledge of the respondents that the applicant, after leaving their firm, despite giving written assurances that he would not commit any such illegal activity again, he has used the software of the respondents in the market without obtaining the consent or permission of the respondents, which compelled the respondents to file the aforementioned suit.

4. Upon summons being served to the applicant, the applicant appeared through his advocate and filed an application under Order VII Rule 11 of the CPC for rejection of the suit/plaint on the ground that the trial court concerned has no jurisdiction as per the relevant provisions of law as well as on other grounds. The said application came to be rejected by the learned trial court vide order dated 04.09.2019, which is impugned in the present application. Being aggrieved, the applicant is here before this Court with the present application.

5. Learned advocate Ms. Natasha Sutaria appearing for the applicant submits that the findings recorded by the learned trial court in the impugned order are perverse, and hence, deserve to be quashed and set aside as the same are not

germane and not based on the evidence on record. Learned advocate Ms. Sutaria further submits that the respondents herein have preferred two different suits in the Court of Senior Civil Judge, Vadodara against two different persons by narrating the same set of facts, seeking the same nature of relief, wherein except the amount of claim, rest of the facts are identical. In short, on the basis of same set of facts, two different suits have been filed by the respondents before the same jurisdictional court against two different persons. She also submits that the defendant in another suit also preferred an application under Order VII Rule 11 of the CPC in the Regular Civil Suit No.601 of 2016, wherein after considering and appreciating the same set of facts based on the same set of evidence, the learned trial court of same jurisdiction, vide order dated 06.02.2018, allowed the application filed under Order VII Rule 11 in the cognate suit filed by another person, thereby rejected the suit/plaint filed by the respondent herein against the similarly situated defendant therein, whereas the application preferred by the applicant herein on the same set of facts and evidence has not been entertained by the same jurisdictional court, and by doing so, the court below has committed a grave error in not entertaining the application filed by the applicant. Learned advocate Ms. Sutaria also submits that the order passed by the learned trial court in Regular Civil Suit No.601 of 2016 instituted against another person, has not been challenged by the respondents herein before any higher forum and thus the same has attained finality. She, therefore, submits that the impugned order dated 04.09.2019 passed below the application filed by the applicant herein deserves to be quashed and set aside in order to maintain the uniformity.

6. Learned advocate Ms. Sutaria further submits that the suit has been filed by the respondent No.1-Partnership Firm and the respondent Nos.2 and 3 in their capacity as the partners of the respondent No.1-firm. She submits that there is no averment/pleading in the plaint stating that the respondent No.1-Firm is a registered partnership firm and they have failed to produce any documentary evidence along with the plaint indicating that the respondent No.1-firm is duly registered under the Indian Partnership Act, 1932. Learned advocate Ms. Sutaria submits that the respondent No.1-Firm is not a registered firm, and as per Section 69 of the Indian Partnership Act, there is specific bar to institute a suit by the firm or the person suing to be the partner of the firm against the firm or against any third person, if the firm is not a registered Firm, and thus the findings arrived at by the learned trial court is contrary to the provisions of Section 69 of the Partnership Act. She submits that, therefore, the judgment and order passed by the learned trial court prima facie found to be erroneous, perverse and against the settled proposition of law and requires to be quashed and set aside. Learned advocate Ms. Sutaria submits that as per sub-section (2) of Section 69 of the Partnership Act, 'No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm'. Learned advocate Ms. Sutaria also submits that the Hon'ble Apex Court, while dealing with an

identically situated issue, in the case of *Bir Bajrang Kumar vs. State of Bihar*, reported in AIR 1997 SC 1345, has held that 'one of the cases involving an identical issue has already been admitted by the High Court, but another identical petition was dismissed by the same High Court, which creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered in the same case by the High Court'. The Hon'ble Apex Court, accordingly, allowed the appeal and set aside the order passed by the High Court impugned therein and remanded the matter back to the High Court.

7. Learned advocate Ms. Sutaria submits that the same principle has been reiterated by a Division Bench of our own High Court in the case of *Rambhai Malubhai Vanzar vs. State of Gujarat & Ors.*, Letters Patent Appeal No.1035 of 2014, wherein it has been held that when on the identical point and identical issue in other matter, notice has been issued and is pending before the learned Single Judge, judicial discretion demands that hearing of both the matters simultaneously and, accordingly, restored the petition which came to be dismissed by the learned Single Judge based on the same set of facts and evidence than that of the petition in which notice came to be issued and ordered to consider the said petition along with the petition that was pending for consideration filed on the same set of facts and evidence. She further submits that the system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that Courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy and, therefore, in order to keep harmony in the judicial discipline, the consistent view is required to be adopted by the courts of coordinate jurisdiction.

8. In such circumstances, referred to above, learned advocate Ms. Sutaria prays that there being merit in this application, the same be allowed and the impugned order be quashed and set aside.

9. Although served with the notice issued by this Court, the respondents have chosen not to appear before this Court and contest the present application either in person or through an advocate.

10. Heard learned counsel for the applicant and perused the record.

11. Before advertng to the rival submissions, it will be useful to examine the provisions of Order VII Rule 11 C.P.C. as well as relevant extract of Section 69 of the Indian Partnership Act.

Order VII Rule 11 is quoted as under:

"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.]”

12. Section 69 of the Indian Partnership Act, 1932, reads thus,

“69. Effect of non-registration.—

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) xxxxxxxxxxxx

(4) xxxxxxxxxxxx”

13. From the reading of Clause 11(d) of Order VII C.P.C., it is clear that where the suit appears from the statements in the plaint to be barred by any law, the Court shall reject the plaint. The word ‘barred by any law’ includes Section 69 of the Partnership Act, and it is the specific case of the applicant herein in the application under Order VII Rule 11 that the respondent No.1-Firm is not a registered Firm and, therefore, the suit filed by them is barred by Section 69 of the Partnership Act, sub-section (1) and sub-section (2) of which, provides that ‘No suit to enforce a right arising from a contract or conferred by this Act shall be

instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm'; or 'No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm'.

14. Indeed, Order VII Rule 11 C.P.C. gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law. In the instant case, a meaningful perusal of the plaint reveals that there is no specific assertion in the entire plaint made by the respondents herein that the respondent No.1 is a registered firm, and the stand taken by the applicant herein in his application under Order VII Rule 11 is very specific that when the firm itself is not a registered firm, then it could not institute the suit against any third person as provided under the provisions of Section 69 of the Partnership Act, and if the suit is barred by any provision of law, then as per Clause 11(d) of Order VII, the Court shall reject the same.

15. In the aforesaid context, I would like to refer to and rely upon the decision in the case of Farooq vs. Sandhya Anthraper Kurishingal & Ors., reported in (2018) 12 SCC 580, wherein the Hon'ble Apex Court has held thus;

"5. Having heard the learned Senior Counsel appearing for the parties, it is clear that the plaint, read as a whole, relied upon Clause 25(d) of the partnership deed which specifically states that no partners of the firm shall without the consent in writing of the other partners be entitled to transfer immovable property belonging to the firm. The plaint then goes on to say that the suit schedule property was purchased out of the funds of the firm for the purpose of development and sale. In Para 11, the plaintiffs discovered that a sale deed has been executed by the first defendant. It has been specifically stated that the plaintiffs had never consented to the same and the first defendant has no authority to sell any immovable property belonging to the firm.

6. The plaint, read as a whole, leaves no manner of doubt that the basis for the suit is Section 69 of the Partnership Act read with Clause 25(d) of the partnership deed dated 29-12-1995. Para 18 of the plaint does not carry the matter further inasmuch as the only sentence which could possibly be relied upon, and which was relied upon by the High Court, is that the plaintiffs are entitled to file the suit even independently of the partnership firm Having found that the basis of the suit is the factum of partnership and having relied upon Clause 25(d) of the partnership deed, it is clear that the trial court correctly found that the bar of Section 69 of the Act was attracted in the facts of this case."

16. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of

evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

17. The underlying object of Order VII Rule 11 is that if in a suit, no cause of action is disclosed or the suit is barred by any law under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

18. In *Azhar Hussain Vs. Rajiv Gandhi*, reported in 1986 Supp SCC 315, the Hon'ble Supreme Court has held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court in the following words:

"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

19. Order VII Rule 11(d) CPC provides that the plaint shall be rejected "where the suit appears from the statement made in the plaint to be barred by any law", hence, in order to decide whether the suit is barred by law, it is the statement in the plaint will have to be construed. The Court while deciding such an application under Order VII Rule 11 C.P.C. must have due regard only to the statements made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

20. In *Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal*, reported in (2017) 13 SCC 174: (2017) 5 SCC (Civ) 602; the Hon'ble Apex Court has summarized the legal position as follows :-

"The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11 CPC be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It

is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

21. With the help of learned advocate for the petitioner, I have perused the plaint of Regular Civil Suit No.600 of 2016 filed by the plaintiffs-respondents, which is at Annexure-B to this petition, and upon bare perusal of the entire plaint, I am unable to find out anywhere in the plaint a single averment that the respondent No.1- is a registered firm, and as such, I find merit in the contention canvassed by the learned advocate for the applicant that in the absence of any assertion made in the plaint by the respondents that their firm is a registered firm, and in the absence of any documentary evidence being produced by them in support thereof, the suit instituted by the respondents is hit by the provisions of Section 69 of the Indian Partnership Act, and when the suit is barred by any law, as per Clause 11(d) of Order VII, the same is required to be dismissed at the threshold.

22. The second limb of arguments canvassed by the learned advocate for the applicant is that two different suits have been filed by the same plaintiffs against two different individuals, seeking same nature of relief based on same set of facts and evidences, and the defendants in both the suits have preferred applications under Order VII Rule 11 for rejection of the plaints/ suits. However, to the utter shock and surprise of the applicant, while on one hand the application filed by the defendant of cognate suit has been allowed and the plaint has been dismissed, on the other hand, the application filed by the applicant herein has been rejected by the same jurisdictional court which is based on the same set of facts and evidences and when the alleged cause of action is also the same, which is contrary to the settled proposition of law that will lead to judicial anarchy. The copy of the order passed in the cognate suit by the same jurisdiction Court has been placed on record, and it is brought to the notice of this Court that except the name and amount of claim, rest of the facts are similar based upon the same set of evidence. I also find merit in the aforesaid contention canvassed by the learned advocate for the applicant. In my opinion, the principle of judicial comity and legal propriety require, in order to avoid conflict of authority and to secure certainty, uniformity and continuity in the administrative of justice, that the courts of coordinate jurisdiction should have consistent opinions/views in respect of an identical set of facts or question of law while exercising the same jurisdiction, else the same may cause immense anarchy in the judicial system and creates untruthfulness in the mind of the

litigants towards the judicial system.

23. At this stage, I would like to quote with profit the decision in the case of *Krishena Kumar v. Union of India*, (1990) 4 SCC 207, wherein at page 233, the Hon'ble Supreme Court has explained the meaning and importance of sparing application of the doctrine of *Stare Decisis*:

"33. *Stare decisis et non quieta movere*. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it."

24. In *Hari Singh v. State of Haryana*, reported in (1993) 3 SCC 114, at page 120, the Hon'ble Supreme Court stated the importance of consistent opinions in achieving harmony in Judicial System:

"10. It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy."

25. In *Bir Bajrang Kumar* (supra), in a very short order, it has been held as under;

"Special Leave is granted. Heard counsel for the parties. After going through the record of the case it appears that one of the cases involving an identical point has already been admitted by the High Court but another identical petition was dismissed by the same High Court. This, therefore, creates a very anomalous position and there is a clear possibility of by two contradictory judgment being rendered in the same case by the High Court. In these circumstances, we allow this appeal and set aside the order dismissing C.W.J.C. No. 103 of 1985. This appeal is remanded to the High Court to be heard along with C.W.J.C. No. 5728 of 1984 which is pending hearing."

26. In the backdrop of the aforesaid discussion, the impugned order dated 04.09.2019, rejecting an application under Order VII Rule 11 is clearly unsustainable, and as such, is hereby quashed and set aside. As a consequences, the plaint stands rejected.