

(2004) 04 AP CK 0094
In the Andhra Pradesh High Court
Case No : CRP No. 1586 of 2003

Saibaba Kirana and General Merchant, Banswada Vg and Mandal

APPELLANT

Vs

Manjira Chit Fund Company, Banswada Vg and Mandal

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Order 7 Rule 14, Order 7 Rule 14(3)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2004) 3 ALD 843 : (2004) 4 ALT 271 : (2004) 2 APLJ 171 : (2004) 4 BC 421

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : V. Ravi Kiran Rao, for the Appellant; P. Venugopal, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This civil revision petition is directed against the order of the Senior Civil Judge, Bodhan, rejecting the plaint in an unnumbered suit holding that the suit is not maintainable.

2. The suit was filed seeking a decree for recovery of Rs. 4,14,900/-. The Revision Petitioner/Plaintiff claims to be a prized bidder of the defendant Chit Fund Company. It is pleaded that the plaintiff paid 22 monthly subscriptions and participated in the auction on 6-9-2002 in which he agreed to forego Rs. 25,100/- out of the chit amount of Rs. 5,00,000/-. Thus, the defendant Chit Fund Company is liable to pay a sum of Rs. 4,74,900/- to the plaintiff towards chit amount and that the defendant has also obtained his signatures on all the relevant documents and promised to pay the said amount within one month. It is also pleaded that the plaintiff agreed to deduct a sum of Rs. 60,000/- towards the remaining future instalments and requested the defendant Chit Fund Company to pay the remaining sum of Rs. 4,14,900/-, but the defendant failed to do so. Hence the suit.

3. The Complaint was returned on an office objection as to the maintainability of the suit on the ground that the plaintiff failed to file the chit agreement entered into between the plaintiff and the defendant Chit Fund Company. The explanation offered by the plaintiff that he surrendered all the documents to the defendant Chit Fund Company and that except the receipt dated 21-3-2002 which was filed as Document No. 4 there is no other document in his possession, was not accepted by the Court below and it was held that in the absence of the agreement said to have been executed by the parties, the suit is not maintainable. Accordingly, the complaint was rejected by order dated 14-2-2003 which is under challenge in this Revision Petition.

4. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the respondent and perused the material on record.

5. The learned Counsel for the petitioner submitted that the rejection of complaint is permissible only on the grounds enumerated under Order 7, Rule 11 of C.P.C. He contends that the order under Revision rejecting the complaint on the ground that the plaintiff failed to file the documents which are material to decide the issue in question is erroneous and not in conformity with Rule 11 since none of the circumstances specified thereunder is attracted.

6. On the other hand, the contention of the learned Counsel for the respondent is that the chit agreement is the basis for the entire suit transaction and in the absence of the said document, it cannot be said that there is any cause of action for the suit claim. Thus, according to the learned Counsel, Clause (a) of Rule 11 of Order 7 C.P.C. is attracted and the Court below has rightly rejected the complaint.

7. For proper appreciation of the rival submissions, it is necessary to note Order 7, Rule 11 of C.P.C. which runs as under :

"Order 7 Rule 11 - Rejection of complaint.-- The complaint 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 complaint 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 complaint to be barred by any law:

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."

8. A perusal of Rule 11 of Order 7 C.P.C. shows that the plaint is liable to be rejected in the four circumstances specified in clauses (a) to (d). Obviously, the object of the provision is to prevent vexatious and meritless litigation at the preliminary stage itself. When a plaint is filed, it is the duty of the Court to see whether it contains necessary allegations which are required to be proved before a decree could be granted. It is true that if the plaint does not contain the necessary allegations and a cause of action is not disclosed, the Court shall reject the plaint. However, the question whether a cause of action is disclosed or not has to be decided on the allegation of facts as reflected in the plaint, but at that stage it is not for the Court to examine whether the plaint allegations are substantiated by material documents nor it is permissible to go into the validity of the documents annexed to the plaint. The power to reject a plaint under Clause (a) of Rule 11 C.P.C. must be exercised where the plaint itself does not disclose a cause of action. In other words, on a perusal of the plaint where the Court comes to a conclusion that even if all the allegations are proved the plaintiff would not be entitled to any relief, the plaint shall be rejected. At that stage, it is not open for the Court to examine the sufficiency of the material available on record so as to enable the plaintiff to obtain the decree as prayed for.

9. Hence, in my considered opinion, the Court below is not justified in having rejected the plaint at the threshold even before numbering the suit on the ground that the plaintiff failed to produce the agreement said to have been executed between the parties. Whether Such document is material to establish the suit claim and whether the plaintiff would succeed in discharging the burden of proving the plaint averments are the questions to be decided at the hearing of the suit after affording due opportunity to both the parties to adduce their evidence.

10. It is further contended by the learned Counsel for the respondent that in view of the provisions of the amended C.P.C., it is mandatory for the plaintiff to file all the relevant documents along with plaint and thus on that ground also the suit cannot be entertained and the plaint is liable to be rejected.

11. It is true that under Rule 14 of Order 7 CPC as substituted by the CPC (Amendment) Act, 2002 (Act No. 22 of 2002) where the plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, such, document shall be produced when the plaint is presented. However, under Sub-rule (3) a document which ought to be produced along with the plaint can be received even at a later stage with the leave of the Court. Hence it is for the Court to consider at appropriate stage whether such a document can be received in evidence, but that cannot be a ground to reject the plaint even before numbering the suit.

12. For the aforesaid reasons, the order under revision is set aside and the revision petition is allowed. No costs.