

(2017) 11 TP CK 0004
In the Tripura High Court
Case No : 71 of 2017

Sri Biswanath Paul, & Ors.

APPELLANT

Vs

Smti Uma Deb, W/o Late Asoke Sankar Deb, & Ors.

RESPONDENT

Date of Decision : 18-11-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7Rule 11](#), [Order 7Rule 11\(d\)](#), [Order 8Rule 1](#) -
[Limitation Act, 1963](#), [Section 27](#) -
Extinguishment of right to property

Citation : (2017) 11 TP CK 0004

Hon'ble Judges : T Vaiphei

Bench : Single Bench

Advocate : D K Biswas, G K Nama, Sankar Deb, R Das Gupta

Judgement

1. Having heard Mr. D.K. Biswas, the learned counsel for the petitioners, and Mr. Shankar Deb, the learned senior counsel assisted by Mr. R. Das Gupta, the learned counsel for the respondents, the sole question which falls for consideration in this civil revision is, whether the filing of an application filed by the defendant under Order VII, Rule 11(d) of the Civil Procedure Code ("the Code" for short) for rejecting the plaint can postpone the filing of a written statement beyond the maximum period for the filing thereof permissible by the proviso to Rule 1 of Order VIII of the Code?

2. The controversy arose on the following facts and circumstances. On 18-5-2016, the respondents instituted the suit for recovery of possession of the suit land from the petitioners, who claimed that they or their predecessors-in-interest have been in continuous possession of the suit since 1968. Summonses were received by the petitioners for the first time on 16-8- 2016. No written statement was immediately filed by the petitioners. It would appear that from 16-8-2016 to 17-11-2016, no written statement was filed by them. However, on 17-11-2016, the petitioners filed an application under Order VII, Rule 11(d) of

the Code for rejecting the plaint on the ground that the suit was time-barred. On 24-6-2017, when the suit was called for hearing, the counsel for the petitioners sought for time as the conducting counsel was outside the State for personal affairs. The trial court observed that four adjournments had already been granted on the prayers of either of the parties and that seeking time for hearing on such an application due to personal affairs was not permissible by law and accordingly rejected the application as it was not moved by the learned Advocate appearing for them. The trial court further observed that no written statement was filed by the petitioners till that day, while the mandatory period of ninety days was over in the meantime and it, accordingly, held that the opportunity to file the written statement was, therefore, closed. Aggrieved by this order, this civil revision has been preferred by the petitioners.

3. Attacking the impugned order, Mr. DK Biswas, the learned counsel for the petitioners, submits that the trial court should have at first decided the permissibility of filing the application under Order VII, Rule 11(d) and only then should have taken up the issue of filing the written statement and having omitted to do so, it improperly exercised the jurisdiction vested in it by law; the impugned order is liable to be set aside for this reason alone. According to the learned counsel, when, on the basis of the plain averments of the respondents and without going into the defence to be set up by the respondents, the suit is plainly barred by Section 27 of the Limitation Act, 1963, it should have been dismissed by the trial court under Order VII, Rule 11(d) of the Code; there is failure on the part of the trial court to exercise its jurisdiction in not rejecting the plaint. To fortify his submissions, he relies on *Sopan Sukhdeo Sable and others v. Asstt. Charity Commissioner and others*, (2004) 3 SCC 137 and *Saleem Bhai v. State of Maharashtra and others*, (2003) 1 SCC 557. He, therefore, submits that the impugned order is liable to be set aside and the suit be remanded to the trial court for hearing the petitioners on their application for rejection of the plaint under Order VII, Rule 11(d).

4. Per contra, Mr. Shankar Deb, the learned senior counsel, defends the impugned order and submits that the impugned order does not suffer from any infirmity warranting the interference of this Court. The learned senior counsel contends that the trial court rightly detected the tactic adopted by the petitioners to circumvent the period of limitation for filing written statement, which could not be filed by them even after three months of receiving the summons, by choosing to file the application under Order VII, Rule 11(d), and correctly rejected the same and close the opportunity for filing the written statement. It is the submission of the learned senior counsel that the filing of an application for rejection of plaint under Order VII, Rule 11(d) does not dispense with the filing of written statement within the time prescribed by the proviso to Order VIII, Rule 1; the petitioners even failed to file the written statement as late as 24-6-2017. According to the learned senior counsel, the impugned order is perfectly in order and is not liable to be set aside. Reliance is placed by the learned senior counsel on the following decisions: *R.K. Roja v. U.S. Rayudu and another*, (2016) 14 SCC

275; Sapan Sukhdeo Sable (supra); Saleem Bhai (supra); Sher Singh (dead) by LRs. V. Joint director of Consolidation and others, (1978) 3 SCC 172; M/S DLF Housing and construction Company (P.) Ltd., New Delhi v. Sarup Singh and others, 1969 (3) SCC 807 and Gauranga Chandra Paul and anr. v. Uma Deb and ors., (2014) 2 TLR 613, in support of his contentions.

5. Before proceeding further, it may be beneficial to reproduce the provision of Order VII, Rule 11(d) of the Civil Procedure Code, which reads thus:

"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.

* * *

(Underlined for emphasis)

Order VIII, Rule 1 is in the following terms:

1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

6. In the case at hand, we are concerned with sub-Clause (d) of Rule 11 of Order VII providing for rejection of plaint where the suit appears from the statement in

the plaint to be barred by law. Thus, irrespective of any objection taken by the defendant, it is the duty of the court to see if the plaint is barred under the provision of law. For this reason, it is the plaint which is to be seen for a decision under Order VII, Rule 11(d). In other words, Order VII, Rule 11(d) applies to those cases only where the statement made by the plaintiff in the plaint without any doubt or dispute show that the suit is barred by any law in force. In *Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137, the Apex Court held that the trial court can exercise the power to reject the plaint under Order VII, Rule 11 at any stage of the suit- before registering the plaint or after issuing the summons to the defendant at any time before the conclusion of the trial. The duty of the trial court to dispose of the application under Order VII, Rule 11 before proceeding with the trial was emphasized by the Apex court in *R.K. Roja v. U.S. Rayudu*, (2016) 14 SCC 275, where it was held:

"5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of *Sopan Sukhdeo Sable* case, (2004) 3 SCC 137:

"20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant."

6. In *Saleem Bhai* case (*supra*), this Court has also held that:

"9. ... a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial court."

However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement."

7. Thus, there can be no doubt that the trial court can exercise the power 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 or at any time before the

conclusion if the trial. This then takes me to the provision of Order VIII, Rule 1, which, after its amendment, casts an obligation on the defendant to file the written statement within thirty days from the date of service of summons on him and within the extended time falling within ninety days. It must be noted that the amended Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers for adjournment. The object is to expedite the hearing and not to scuttle the same; justice delayed is justice denied. In my opinion, the object of the amendment and the position of law are, with due respect, best explained in the inimitable words of Hon"ble Justice PK Balasubramanyam in *R.N. Jadi & Brothers and others v. Subhashchandra*, (2007) 6 SCC 420:

"11. The amended Order 8 Rule 1 fixes a time-limit for the filing of written statements. But, Parliament did not stop with amending Order 8 Rule 1 alone i.e. introducing a time-limit for filing written statements and restricting the power of the court to grant extension of time for filing written statements as 90 days from the date of service of summons. The power for extension of time granted to the court under Section 148 of the Code was curtailed by introducing an outer time limit of 30 days from the date originally fixed or granted. Thus, the legislative intent to limit or curtail the power of the court to extend the time for filing a written statement is obvious from a conjoint reading of these provisions.

12. In addition to the time-limit prescribed in Order 8 Rule 1 of the Code, it is provided in Order 5 Rule 1 that the summons issued to the defendant should itself provide that he has to appear and file his written statement within one month of receipt of it and limiting the power of the court to extend the time for written statement to 90 days. The summons is to be accompanied by a copy of the plaint. It simultaneously introduced Rule 14 to Order 7 providing that where the plaintiff sues upon a document or relies upon a document in his possession or power, in support of his claim, he shall enter such documents in a list and shall produce it in court when the plaint is presented by him and shall at the same time deliver the document and copy thereof to be filed with the plaint. Sub-rule (3) was introduced to provide that if the document is not included in the list, or is not produced with the plaint, it was not to be produced without the leave of the court and without the leave of the court it shall not be received in evidence on his behalf at the hearing of the suit.

13. In such a position, normally no injustice would be caused to the defendant in insisting upon his filing the written statement at least within 90 days of having received the summons in the suit. I think that it would be proper to avoid an interpretation that may tend to thwart the legislative intent in such circumstances.

14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knockouts. But

how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash v. Nanhku*, (2005) 4 SCC 480 which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in *Kailash v. Nanhku* (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time-limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* (supra) is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *Allen v. Sir Alfred McAlpine & Sons*, (1968) 2 QB 229; 1968 2 WLR 366; (1968) 1 All ER543 (CA) that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

8. Thus, on the one hand, there is a provision for filing an application under Order VII, Rule 11 for rejection of plaint, which, according to *Sapan Sukhdeo Sable* case, can be filed at any stage of the trial- See *Sapan Sukhdeo Sable* case (supra). On the other hand, Order 8, Rule 1 prescribes the maximum limit for filing of a written statement. Of course, this maximum limit can be extended due to rare and exceptional case- See *RN Jabi* case (supra). The question is, whether the mere filing of an application for rejection of plaint can empower the trial court to extend the maximum period for filing of such an application prescribed by the proviso to Order VIII, Rule 1? In my opinion, the answer to this will depend on whether the defendant is able to satisfy the trial court that he could not file the written statement beyond the maximum period prescribed by law due

to rare and exceptional reasons. As already noticed, the Apex Court in Saleem Bhai case (supra) held that a direction to file the written statement without disposing of the application under Order VII, Rule 11 will amount to improper exercise of jurisdiction. At the same time, it was also held in RK Roja case (supra), that liberty to file an application for rejection under Order VII Rule 11 cannot be made a ruse for retrieving the lost opportunity of filing the written statement. In my opinion, if the application for rejection of plaint can be filed at any stage of the trial as indicated above, the filing of the written statement cannot be postponed indefinitely. After all, the proviso to Order 8, Rule 1 prescribes the time limit for filing of the written statement, which, after the expiry of ninety days, can only be extended for rare and exceptional reason. The defendant can file the application under Order 7, Rule 11 at any stage of the trial, but he must also file the written statement within the limit prescribed by the proviso to Order 8, Rule 1 or within the extended period permitted by the trial court due to rare and exceptional reason. In this way, in my opinion, the seemingly conflicting provisions of Order 7, Rule 11 and Order 8, Rule 1 can be allowed to operate harmoniously. Therefore, the filing of an application filed by the defendant under Order VII, Rule 11(d) of the Civil Procedure Code ("the Code" for short) for rejecting the plaint cannot postpone the filing of a written statement beyond the maximum period for the filing thereof permissible by the proviso to Rule 1 of Order VIII of the Code or the extended period permitted by the court due to rare and exceptional reason. Any other interpretation will defeat the very object of the amendment or render the proviso to Order 8, Rule 1 nugatory. In other words, the defendant is required to file the written statement within the time limit permissible by the proviso to Order 8, Rule 1 or within the extended time granted by the court due to rare and exceptional reason, if there any, but he cannot simply allow time to pass to file such an application and when so filed and disposed of by the court after the expiry of the said time limit, he cannot use such lapse of time as an excuse to file the written statement beyond the permissible time limit indicated above. After all, independently of the provision of Order 8, Rule 1, he can always file such an application even at any stage of the trial before the conclusion of the trial. Of course, as and when such an application is filed, it is the duty of the trial court to dispose of the same expeditiously so that the trial is not unnecessarily protracted as otherwise failure to do so will be tantamount to non-exercise of jurisdiction.

9. In the instant case, it may be recalled that the petitioners filed the application for rejection of the plaint only on 17-11-2016 though they received the summons as early as 16-8-2016 i.e. beyond the period of ninety days prescribed by the proviso to Order VIII, Rule 1. The application was rejected on 24-6-2017. By this time, about ten months have lapsed even before filing of the written statement; the maximum period for filing of the written statement was over. In these circumstances, I cannot but conclude that the application for rejection of plaint was filed by the petitioners only a device to retrieve the lost opportunity of filing the written statement.

10. That apart, the respondents-plaintiffs at paragraph 14 of the plaint pleaded that the cause of action for the suit arose on 20-6-2014. Whether this statement is correct or not cannot be considered at this stage. Once a specific assertion is made by the plaintiffs that the suit is within the period of limitation as the cause of action arose on 20-6-2014, the provision of Order VII, Rule 11(d) is not attracted. Even if the petitioners wish to deny this assertion of fact with respect to the commencement of the cause of action, it can do only by filing of the written statement, but then the issue as to whether the plaint is barred by the law of limitation cannot be decided by court by looking into the written statement; it is the plaint only which is to be seen for a decision under Order 7, Rule 11. In my judgment, the legal position is, with due respect, succinctly explained by the Rajasthan High Court in *Mohan Lal Sukhadia University v. Miss Priya Solomon*, AIR 1999 Raj 102 in this way:

"5. It is common knowledge that parties may take such interpretation of law as they may be advised and in matter relating to limitation, the plaintiff may assert that the period of limitation should be counted from a particular date. The defendant may or may not agree with such a view. If a controversy arises, the trial Court has to decide this controversy in accordance with law after hearing both the parties and taking such evidence regarding the disputed question of fact, as may be necessary. Such disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11, C.P.C. In my considered opinion, Clause (d) of Rule 11 of Order 7, C.P.C. applies to those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in the force."

11. Though the learned Civil Judge did not dispose of the application for rejection of the plaint on merit, for which he might have exposed himself to the charge of improper exercise of jurisdiction, such rejection, on the basis of my above findings, nevertheless does not call for my interference, more so, remanding the case only for reconsideration will be an exercise in futility. The decision of the learned Civil Judge in closing the filing of the written statement cannot also be faulted with as the petitioners have by this time truly forfeited their right to file the written statement due to efflux of time. As found by me, the petitioners deliberately omitted to file the written statement and on the expiry of ninety days for filing of the written statement, the application for rejection of the plaint was filed so as to overcome the hurdle imposed by the proviso to Order VIII, Rule 1; no rare or exceptional reasons could be pleaded by them for not filing the written statement beyond the period of ninety days. In this context, I am tempted to quote the sharp observations made by the Apex Court in *RN Jedi* case (*supra*) as to what is usually confronting the trial court while trying a civil case:

"11. It is notorious that suits were being dragged on by the defendants in suits by not filing their written statements within a reasonable time. We are not unaware of cases where written statements were not filed even within two or three years of the filing of the suits. The control expected to be exercised by

courts, by the scheme of the Code, was not being exercised leading to slackness in the matter of filing of pleadings in defence. It was in that context that the relevant provisions of the Code of Civil Procedure were amended, the laudable object being to avoid delay in the disposal of suits."

12. The offshoot of the foregoing discussion is that there is no merit in this civil revision, which is dismissed at the very threshold. The trial court shall now proceed with the trial without the written statement and dispose of the suit in accordance with law. The parties are, however, directed to bear their respective costs. Circulate this judgment to all civil and appellate courts for information.