

(2003) 06 OHC CK 0044

In the Orissa High Court

Case No : Civil Revision No. 483 of 1999

State Bank of India and Others

APPELLANT

Vs

Somnath Sahoo

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115

Citation : (2004) 1 CivCC 634 : (2003) 96 CLT 323

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Madan Mohan Das, for the Appellant; S.S. Rao, B.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Defendants in Money Suit No. 138 of 1996 of the Court of Civil Judge (Senior Division), Rourkela are the petitioners and the plaintiff is the opposite party in this civil revision. An application filed by the petitioners to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short "the Code") was rejected by learned Civil Judge (Senior Division) Rourkela on 29.9. 1997. That was challenged before this Court by the present petitioners in Civil Revision No. 327 of 1997. On 20.11.1998 that revision was disposed of by this Court directing the court below in the following manner :

"I direct that the trial court should consider the maintainability of the suit in the light of provisions contained in Order 7, Rule 11, CPC. If question of maintainability of the suit on any other ground is raised which is dependent upon question of fact, the same has to be decided along with other issues, but if any question of maintainability not dependent upon any factual issue crops up, the same should also be decided."

On the basis of the above direction the application under Order 7 Rule 11 of the Code was considered and it was rejected by learned Civil Judge on 24.9.1999.

That order is under challenged in this Civil Revision.

2. It appears from the contention of the parties that petitioners challenged to the rejection of the plaint under Order 7 Rule 11 Clause (a) of Code. In other words, they wanted rejection of the plaint on the ground of non-disclosure of cause of action and that the plaintiff has no locus standi to claim damage for the company in the name and style of M/s Mitujini Chemicals Pvt. Ltd. because according to the plaint averments he does not represent such company either as a member of Board of Directors or Managing Director and when no legal status had been acquired by him so as to claim for the damage on behalf of the company.

3. Plaintiff's claim of damage is because of refusal of the State Bank of India to grant him further loan. Plaintiff has claimed damage in that respect to the tune of Rs. 13,0039,513/- with other consequential relief. Plaintiff has claimed and obtained the relief of exemption from making payment of court-fees.

4. Learned Civil Judge rejected the application on the ground that plaintiff was a Director and the Managing Director of the Firm when the loan transactions were negotiated and correspondences made subsequently in respect of sanction of the loan have been entertained by the petitioners, therefore, plaintiff is entitled to maintain the suit by claiming damage for the Company as well as for himself. The Court below also held that on a total reading of the plaint it did not find lack of cause of action because a case of damage has been properly pleaded.

5. A written statement has already been filed by the defendants/petitioners. In that written statement they have denied to all the material allegations and the claim for damage. They have also raised dispute challenging to the maintainability of the suit on various pleas.

6. It is the settled position of law that while considering a plaint under Order 7 Rule 11 of the Code Court is not supposed to look to the defence plea but to find out if the plaint is liable to be rejected for want of cause of action as provided in Clause (a) or for the relevant lacuna as provided in Clauses (b), (c) & (d) in Order 7 Rule 11 of the Code.

7. Since an order passed in rejecting the claim under Order 7 Rule 11 of the Code for lack of cause of action amounts to a decree, therefore, such an order is appealable. But where an application under Order 7 Rule 11 is rejected that is not appealable. Under such circumstance, whenever the Court finds illegality or jurisdictional error committed by the Court below in rejecting application under Order 7 Rule 11 of the Code, then the revisional court has the jurisdiction u/s 115 to consider the legality and sustainability of such orders because it has the effect of leading to a consequence for disposal of the suit. In the event a revision is entertained, then in appropriate case the revisional court may pass appropriate order directing the court below to correctly assess the fact by following the provisions of law, but since the effect of rejection of a plaint under Order 7, Rule 11 (a) has the force of a decree, the revisional court should not pass an order rejecting a plaint while exercising jurisdiction u/s 115. The above view gains

support from the ratio in the case of Purusottam Das and sons v. S.B.I, Vol. 33 (1991) OJC 228 (Civil).

Keeping in view the aforesaid provision of law, contention of the parties is taken up for consideration.

8. For the reasons indicated below this Court feels it proper that learned Civil Judge (Senior Division) has failed to exercise the jurisdiction vested in him by properly evaluating the fact and consider the consequence of law relating to cause of action and maintainability of the suit for damage for the Company. This Court thus disposes of this Revision with a direction to the court below to consider the application under Order 7, Rule 11 (a) of the Code afresh in accordance with law. In that context, it may be noted that the Court below has referred to certain citations without gathering the true import and principle thereunder. It is the duty of the Court not only to refer to but also to understand and apply a ratio correctly while deciding any issue or considering an application.

9. The fact as to whether the plaintiff has instituted the suit in his individual capacity for the self or for the Company has to be clearly understood and decided and the erstwhile Director or the Managing Director of a Company without having the requisite, authority cannot institute a suit by making claim of damage for the company or the firm along with compensation for the alleged damage. In that context, the trial court has totally confused himself and failed to properly decide that contention with systematic and proper reading of the plaint. Similarly, reference to the principle of tort from Salmond's law on Tort may be good, but applying the same principle without considering relevancy is not correct. In that respect, lucid deliberation made by this Court in the case of Orissa Mining Corporation Ltd. v. Klockner and Company and Ors.1995 (II) OLR 16 has been accepted by both the parties as the correct position of law. So also the matter relating to cause of action and material facts has been lucidly deliberated in the case of Sivananda Roy Vs. Janaki Ballav Pattnaik and Others, . Thus, this Court finds that learned Civil Judge (Senior Division) without considering the relevant facts from the plaint and applying the law in proper manner has confused himself and thereafter he has rejected the application of the petitioners. Therefore, the impugned order suffers from illegality and improper exercise of jurisdiction. Therefore, the impugned order is set aside with a direction to the court below to consider the application afresh with due appreciation of fact and law.

10. It be borne in mind by the parties as well as learned Civil Judge (Senior Division) that nothing deliberated above should be construed in any manner as an indication towards allowing or rejection of the application under Order 7 Rule 11 of the Code. All that this Court has desired that the Court below should consider the application properly and on due appreciation of fact and proper understanding of law. Therefore, the Court below shall feel free to hear and dispose of the application in accordance with law. It will be proper for the Court below to consider and dispose of that application within a period of four weeks from the date of receipt of L.C.R. along with a copy of this order and after

affording opportunity of hearing to the parties.

The Civil Revision is accordingly allowed. No costs. Send back the L. C. R.