
(2017) 05 JH CK 0053
In the Jharkhand High Court
Case No : 9 of 2015

The New India Assurance Company Ltd.	APPELLANT
Vs	
Smt. Shanto Bala Devi	RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#)

Citation : (2017) 05 JH CK 0053

Hon'ble Judges : H.C. Mishra

Bench : SINGLE BENCH

Advocate : Ashok Kumar Sinha, Rashmi Kumari, Jasvinder Mazumdar,
Chandrajit Mukherjee, Rajesh Kumar

Judgement

1. The present interlocutory application has been filed on behalf of the respondent No.1, i.e., the returned candidate, under Or. VII, R. 11 of the Code of Civil Procedure, praying to reject the election petition on the ground that no cause of action has been mentioned in the election petition.

2. Heard learned counsel for the respondent No.1 and the learned counsel for the election petitioner on this interlocutory application.

3. It is submitted by learned counsel for the respondent that in the entire election petition, the election petitioner has not stated the cause of action nor he has stated as to when cause of action arose to file the election petition. It is submitted that accordingly, the election petition is fit to be dismissed in view of Or. VII R. 11 of the CPC, which reads as follows:- "11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

**** * ."

4. In support of her contention, learned counsel has placed reliance upon the

decision of the Supreme Court of India in *M. Chandra Vs. M. Thangamuthu & Anr.*, reported in (2010) 9 SCC 712, wherein the law has been laid down as follows:- "79. It is settled legal position that an election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. To see whether material facts have been duly disclosed or whether a cause of action arises, we need to look at the averment and pleadings taken up by the party."

5. Learned counsel has also placed reliance upon the decision of the Supreme Court in *Kuldeep Singh Pathania Vs. Bikram Singh Jaryal*, reported in 2017 (1) JLJR 462 (SC), wherein, it has been held as follows:- "6. -----. Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute. But that is not the situation as far as the enquiry under Order VII Rule 11 is concerned. That is only on institutional defects. The court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the Court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant."

6. Reliance has also been placed upon the decision of the Supreme Court of India in *Church of North India Vs. Lavajibhai Ratanjibhai & Ors.*, reported in (2005) 10 SCC 760, wherein, it has been held as follows: "39. -----. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure."

7. Learned counsel in this connection has also placed reliance upon a decision of the Supreme Court of India in *Sandeep Polymers (P) Ltd. Vs. Bajaj Auto Ltd. & Ors.* reported in (2007)7 SCC 148. Placing reliance on these decisions, learned counsel submitted that in the entire election petition, no cause of action has been mentioned by the election petitioner and accordingly, it is a fit case, in which, the election petition be dismissed under Or. VII R. 11 of the Code of Civil Procedure.

8. Per contra, learned counsel for the election petitioner submitted that the entire bundle of facts giving rise to this election petition has been stated in the petition. Illegalities committed, resulting the election of the returned candidate, are also detailed in the election petition. Learned counsel for the election petitioner also placed reliance on the same set of Judgments relied upon by the learned counsel for the respondent, submitting that it is clear in these judgments that the cause of action means the bundle of facts giving rise to the cause to enforce the right

in the Court of law. It is submitted that the cause of action is only the bundle of facts, which gives right to plaintiff to claim the relief against the defendant, and since the necessary facts giving rise to the cause of action have been pleaded in the election petition, the election petition is maintainable and cannot be dismissed on this preliminary objection.

9. I have gone through the pleadings made in the election petition. In the present case, the election petitioner has challenged the election of the respondent No.1 and has stated that his nomination was wrongly accepted. The election petitioner has challenged the election of the respondent No.1 on the grounds as enumerated in para 11 of the election petition. It is alleged that the nomination paper of the respondent No.1 was wrongly accepted and there is also allegation of suppression of material facts about criminal cases against the respondent No.1 in his nomination paper. In my considered view, these facts and other such facts, challenging the election of the returned candidate, are such bundle of facts, which as traversed by the returned candidate in his written statement, are required to be proved by the election petitioner, in order to get a relief from this Court and accordingly, they constitute the cause of action. In my considered view, though in the election petition It is not separately stated that the cause of action arose out of these facts, or it is not separately stated that when these cause of action arose, but the fact remains that these statements contain such bundles of facts, that if proved, the election petitioner may succeed in getting a judgment in his favour, and accordingly, they constitute the cause of action for bringing this election petition.

10. In *Om Prakash Srivastava v. Union of India & Anr.*, reported in (2006) 6 SCC 207, the term "cause of action" has been elaborately explained by the Hon'ble Apex Court in the following terms:- "9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd. v. Subhash Himatlal Desai*)

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadrans v. Madhavan Sunil Kumar*)

11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd.*]

12. The expression "cause of action" has acquired a judicially settled meaning. In

the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India.)

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh.)

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra.)"

11. In view of the meaning given to the term "cause of action" by the Apex Court, the election petition cannot be rejected under Or.VII R.11 of the CPC, only due to the fact that cause of action has not been separately stated in the election petition, particularly when the bundles of facts stated therein, constitute the cause of action. As such, I do not find any merit in the interlocutory application filed by the returned candidate, praying to dismiss the election petition on the ground of non-disclosure of the cause of action.

12. There is no merit in this interlocutory application and the same is accordingly, dismissed.

13. At the request of the learned counsels for the parties, put up the matter on 9th June 2017 for further proceeding.