courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(2013) 09 CAL CK 0031

Calcutta High Court

Case No: R.V.W. No. 120 of 2013, C.A.N. No. 4360 of 2012 and C.O. No. 4030 of 2008

Subarnarekha Properties Pvt. Ltd.	APPELLANT
Vs	
Dr. Akbar Ali Khan	RESPONDENT

Date of Decision: Sept. 16, 2013

Citation: (2014) 1 CHN 498

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Judgement

Soumen Sen, J.
The petitioner being the opposite party in the Civil Revisional Application being C.O. 4030 of 2008 has filed this application for review of an order passed by this Court on 22nd March, 2012. The ground for review is that while disposing of the application on 22nd March, 2012, a direction was passed upon the Civil Judge (Senior Division), Alipore to dispose of the application filed by the revisionist under Order 7 Rule 11 of the CPC first, although the plaintiff/applicant has filed an application prior in point of time, namely, on 22nd April, 2010 for amendment of the plaint. The application for rejection of the plaint was filed on 25th January, 2011. It was, thus, submitted that before the said application for rejection of the plaint was filed, the learned Court should have heard and decided the application filed by the plaintiff for amendment of the plaint in April, 2010. It is contended that the learned Trial Judge on the basis of the order passed by this Court had taken a view that the learned Court is first required to hear and decide the application under Order 7 Rule 11 of the CPC before proceeding with the suit and would not be required to hear the application filed under Order 6 Rule 11 of the CPC prior to the disposal of the said application for rejection of plaint.

2. The plaintiff is responsible for the situation that has resulted as a consequence of the order passed by this Court on 22nd March, 2012.

3. The learned Counsel appearing on behalf of the plaintiff/opposite parties/applicants expressed his inability to inform this Court about the status of Title Suit No. 994 of 2007. This Court was never informed that a prior application for amendment of plaint was pending before the learned Civil Judge (Senior Division). The Court proceeded on the basis that no prior application for amendment of the plaint is pending and has, accordingly, directed the Civil Judge (Senior Division) to decide an application for rejection of plaint as a decision on the said application in favour of the defendants would put an end to the suit instituted by the plaintiff. It was never the intention of the Court that the Civil Judge (Senior Division) would decide the said application for rejection of plaint disregarding a prior application for amendment of plaint. The direction that the learned Civil Judge (Senior Division) would decide the application under Order 7 Rule 11 of the CPC first before proceeding with the suits is on the basis that there was no application pending for amendment of the plaint. The Court was never informed by either of the parties that an application for amendment of plaint is pending since April, 2010 in connection with Title Suit No. 994 of 2007.

4. Mr. Saktinath Mukherjee, the learned Senior Counsel appearing with Mr. S.P. Roy Chowdhury submitted that the amendment proposed in the said application for amendment of plaint would not in any way affect the application filed by the revisionist for rejection of plaint as even if the said amendment is allowed the ground on which the application of amendment has been filed for rejection of the plaint would still hold good and likely to succeed the plaint is liable to be rejected. Mr. Mukherjee has referred to a number of decisions with regard to the power exercised by the Court in allowing the amendment of the plaint which, inter alia, include the decisions reported in Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others, and Manthan Brand Band Services Pvt. Ltd. and Another Vs. C.K.T. Communications Pvt. Ltd., .

5. The learned Senior Counsel has referred to the plaint and the application for amendment of the plaint to show that such proposed amendment would not in any way affect the application filed by the defendants for rejection of the plaint. It was further contended that the suit is frivolous and an abuse of the process of law and the Court can at any stage of the suit--before registering the plaint and after issuing summons to the defendant at any time would exercise its power under Order 7 Rule 11 of the CPC to reject the plaint. The Court is required to consider the averments made in the plaint and if it appears to the Court that it is an abuse of the process of law, the Court then and there can dismiss the suit in limine. Such frivolous proceedings, shall be nipped in the bud. The proposed amendment is not at all entertainable by the learned Court below and, accordingly, there is no requirement either to clarify or to review the order passed by this Court.

6. Mr. Syed Nasim Aejaz, the learned Counsel appearing on behalf of the defendant submitted that it was a mistake on the part of the learned Advocate appearing on behalf of the plaintiff in not informing the Court about the pendency of the application for amendment of the plaint filed in April, 2010, and in the event, the said application is not

heard prior to disposal of the application filed under Order 7 Rule 11 of the Code of Civil Procedure, the plaintiff would suffer loss and prejudice.

7. The learned Counsel has referred to a Single Bench Decision of our High Court reported in Nellimarla Jute Mills Company Ltd. Vs. Rampuria Industries and Investments Ltd. in support of his submission that when an amendment petition is filed, it is a duty of the Court to allow amendment of the plaint for rectification of defects. The duty of the Court in such circumstances to find out whether such an amendment would be necessary and the provision of Order 7 Rule 11 of the CPC does not take away the power of the Court to allow the amendment of the plaint when it discloses no cause of action. The learned Counsel has relied upon the observation of the learned Single Judge in Paragraph 15 where His Lordship stated that the conjoint reading of Order 7 Rule 11 and Order 7 Rule 13 of the of CPC gives sufficient indication that if the plaintiff wants to cure the defects in the plaint by supplying the lacking materials in the plaint and/or to cure any other defects therein, as the case may be, the prayer for amendment should not be rejected and if after allowing the amendment, the Court finds that the requirements for maintaining the plaint are fulfilled, the plaint cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

8. At this stage it is neither proper nor desirable for this Court to express any opinion with regard to the merits of the application filed for amendment of the plaint or any observation with regard to the application filed by the defendants for rejection of the plaint. The Trial Court is the master of its own proceedings.

9. The revisional application arose out of an order passed by the Civil Judge (Junior Division) in connection with Title Suit No. 327 of 2008. The learned Trial Judge rejected the application filed by the applicant who was a defendant in the said Title Suit No. 327 of 2008 for stay of the said suit in view of pendency of an earlier suit instituted by the said applicant being Title Suit No. 994 of 2007.

10. Any proceeding arising out of Title Suit No. 994 of 2007 was not before me when I had passed the order now under review. This Court, however, in the interest of justice directed consolidation of the suits with a direction that the application filed by M/s. Subarnarekha for rejection of plaint in connection with a Title Suit No. 994 of 2007 shall be heard first before proceeding with the suits.

11. This direction was passed as I mentioned earlier unaware of the pendency of a prior application for amendment of the plaint. The Hon"ble Supreme Court in Green View Tea and Industries Vs. Collector, Golaghat, Assam and Another, quoted with approval the observations in S. Nagaraj and Others Vs. State of Karnataka and Another, in which it is stated:

It is the duty of the Court to rectify, refuse and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of

facts and that implementation of those orders would have serious consequences. An act of Court should prejudice none. "Of all these things respecting which learned men dispute", said Cicero, "there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature". This very idea was echoed by James Madison (The Federalist, No. 51 at p. 352). He said:

Justice is the end of the Government. It is the end of the civil society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit.

12. Mr. Saktinath Mukherjee, learned Senior Counsel appearing on behalf of the defendants in the suit referred to the averments made in the plaint and submitted that frivolity writs large on the face of the plant and the direction passed by this Court with regard to hearing of the application under Order 7 Rule 11 of the CPC is in consonance with the object of Order 7 Rule 11 as enunciated by the Hon"ble Supreme Court in several decisions including the decisions reported in Saleem Bhai and Others Vs. State of Maharashtra and Others, , The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, and T. Arivandandam Vs. T.V. Satyapal and Another, .

13. Mr. Mukherjee submitted that the power to reject the plaint can be exercised even before registering the plaint or even after issuing summons to the defendants or at any time before conclusion of trial.

14. The power and jurisdiction under Order 7 Rule 11 would be exercised by the Court, in the event, the Court finds that the plaint did not disclose any cause of action or the cause of action is illusory or it is frivolous, vexatious and an abuse of the process of law.

15. It is needless to mention that frivolous and vexatious claims should be nipped in the bud as observed in T. Arivandandam Vs. T.V. Satyapal and Another, and the said decision has been followed in several subsequent decisions including Church of Christ (supra).

16. Mr. Mukherjee has relied upon Paragraph 5 in T. Arivandandam (supra) in which the Hon"ble Supreme Court stated:-

5. If on a meaningful--not formal--reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise its power under O. 7 R. 11. C.P.C. taking care to see that the ground mentioned therein is fulfilled. The Trial Courts should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men and must be triggered against them.

17. The precious and valuable time of the Court should not be wasted in deciding frivolous litigations and exemplary costs should be awarded in the event the Court finds

that the claim is frivolous or vexatious. Although, the averments made in the plaint has been extensively placed and reference was also made to the nature of the amendments sought to be introduced at this stage, it would not be proper for this Court at this stage to express any opinion on the plaint or the nature of the amendment, although it is argued on behalf of the defendants that the suit is ex facie frivolous, incredulous and irrespective of the nature of the amendment, the suit has to go and suffer dismissal at the threshold.

18. This Court had proceeded on the assumption of a fact that no application for amendment was, in fact, pending before the learned Trial Judge in connection with the said suit. In that case, the aforesaid direction would have been worded differently and the word "first" would not have been mentioned. The application for amendment of the plaint is pending since April, 2010. In view thereof, the order under review is clarified to the extent that the said order shall not be construed to mean that the Trial Court would not hear the application for amendment of the plaint at all if the Trial Court feels that the said application for amendment is required to be heard first before deciding the application for rejection of the plaint or along with the application for rejection of plaint the Trial Court shall do so and proceed with the hearing of such application or applications. The Trial Court would be free to proceed with the hearing of the applications in the manner the Trial Court deem fit and proper uninfluenced by the observations made in the order under review. This Court is informed that the hearing of the application for rejection of the plaint is about to be concluded. If the Trial Court feels that the application for amendment of the plaint is also required to be heard prior to delivery of judgment in connection with the application for rejection of the plaint, the Trial Court shall do so and shall hear and decide the said application on merits and in accordance with law. The Trial Court shall decide the matter impartially uninfluenced by any observation made in the original order and in this order in accordance with law. The order under review should not be construed to mean that this power and freedom of the Trial Court as well as of the parties have been taken away by the order under review. Mr. Mukherjee submitted that the defendants should be permitted to raise that the application for rejection of the plaint shall be heard first. As observed by me the Trial Court shall decide the procedure and course of action to be adopted in this regard and decide the matter in accordance with law.

19. The order under review stands modified to the aforesaid extent.

20. The application, being R.V.W. 120 of 2013 with CAN No. 4360 of 2012, is disposed of Accordingly. Urgent xerox certified copy of this judgment, if applied for be given to the parties on usual undertaking.