

Ismail Hussain Fatmi Vs Radheshyam Gupta

Court: Chhattisgarh High Court

Date of Decision: May 15, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 6 Rule 16, Order 7 Rule 11, Order 7 Rule 11(a), 115

Hon'ble Judges: T.P. Sharma, J

Bench: Division Bench

Advocate: Pramod Kumar Verma, with Mr. Sumit Verma, for the Appellant; B.P. Gupta, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.

By this revision, the petitioner has challenged legality & propriety of the order dated 26-11-2007 passed by the Rent

Controlling Authority, Rajnandgaon in Case No. 3-A/90 of the year 1993-94, whereby learned Rent Controlling Authority has allowed the petition

filed on behalf of the respondent under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "the Code") and dismissed the petition

filed on behalf of the petitioner for eviction of the tenant/respondent. The order is challenged on the ground that the Rent Controlling Authority has

exceeded its jurisdiction by considering the allegation made in the written statement of the respondent instead of considering the allegation made in

the plaint relating to tenability of the suit and thereby committed illegality.

2. I have heard learned counsel for the parties and perused the copy of the impugned order, copy of the petition for eviction filed on behalf of the

petitioner, copy of the reply/ written statement filed on behalf of the respondent, copy of the petition under Order VII Rule 11 of the Code and its

reply.

3. Originally the petition for eviction under Section 23A (a) & (b) of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act") was

filed by the petitioner on the ground that the petitioner is a retired employee and accommodation is required for his residence in which the petitioner

has specifically alleged that he is owner of the accommodation and the respondent is tenant of the said accommodation. After filing of written

statement on behalf of the respondent, the respondent has filed an application under Order VII Rule 11 of the C.P.C. on the ground that the

present petitioner is not the only landlord and the present respondent is not the only tenant of the accommodation, therefore, the petition for

eviction is not competent. The present petitioner has alleged in his reply that after the death of original landlord/owner Shakina Bi, her son i.e. the

present petitioner is co-owner of the property and is entitled for eviction for his bona fide need and the respondent is the only tenant. After

affording opportunity of hearing to the parties, learned Rent Controlling Authority has allowed the application filed under Order VII Rule 11 of the

Code and dismissed the petition for eviction filed on behalf of the petitioner.

4. Learned Senior Advocate appearing on behalf of the petitioner submits that tenability of the suit in terms of Order VII Rule 11 of the Code shall

be considered in the light of the allegation made in the plaint and not in the light of the allegation made in the written statement. The present

petitioner has alleged in his petition and also in the reply to the application filed under Order VII Rule 11 of the Code that he is landlord/co-owner

of the accommodation and the present respondent is the only tenant of the suit premises, but the Court below has failed to appreciate the allegation

of the petitioner and has illegally dismissed the petition for eviction. Learned Senior Advocate further submits that the present revision is

maintainable in accordance with Section 23-E of the Act & Section 115 of the Code, because the same has been preferred against the final

order/decision of the Rent Controlling Authority, He placed reliance in the matter of Mayar (H.K.) Ltd. and Others Vs. Owners and Parties,

Vessel M.V. Fortune Express and Others, , in which the Apex Court has held that the plaint cannot be rejected on the basis of the allegations

made by the defendant in his written statement, allegations made in the plaint can be considered only for deciding the tenability of the plaint under

Order VII Rule 11 of the Code. Even the opinion of the Judge that the plaintiff will not succeed cannot be a ground for rejection of the plaint.

Learned Senior Advocate further placed reliance in the matter of Lukehwar and others Vs. Dhebar Singh and others, , in which the Madhya

Pradesh High Court has held that ""a plaint can be rejected only when on reading of the plaint itself, either it does not disclose a cause of action or it

appears to be barred by some law. The Courts are not entitled to travel beyond the pleadings of the plaint. If the defendants plead that the suit is

barred by some law because of some additional factors pleaded by him, then he has to establish these factors"". Learned Senior Advocate also

placed reliance in the matter of Ghanshyamdas Gupta Vs. Shivaldas and others, , in which it has been held by the Madhya Pradesh High Court that

plurality of ownership is not a disqualification for filing petition for eviction u/s 23-A (a) of the Act and co-owner alone is entitled for eviction u/s

23-A (a) of the Act.

5. On the other hand, the order impugned is supported on behalf of the respondent and learned counsel for the respondent submitted that the

present revision is not maintainable in terms of Section 23-E of the Act read with Section 115 of the Code. Learned counsel further submits that

the scope of interference in revision is limited and in accordance with Section 23-E of the Act, High Courts are required to exercise the same

power and follow the same procedure as it does for disposal of a revision u/s 115 of the Code. Proviso to sub-section (I) of Section 115 of the

Code restricts & limits the revisional jurisdiction and the revisional jurisdiction may only be exercised if the order is made in favour of the petitioner

and the suit or other proceedings would be finally disposed of. But in the instant case, if the revision is allowed, then the proceeding would not be

disposed of, but the proceeding before the Rent Controlling Authority would continue. Learned counsel also submits that the present respondent

has filed an application under Order VII Rule 11 of the Code to which while filing reply, the present petitioner has categorically admitted that he is

not the original landlord and the original landlord was Shakina Bi, his mother, who died leaving behind three daughters & three sons including the

petitioner. It was also alleged by the petitioner that originally the accommodation was given to the father of the respondent and the present

respondent is the only legal representative of deceased Shakkulal Gupta, father of the respondent. Learned counsel further submits that on the

basis of additional allegations made by the present petitioner, the suit is not maintainable, the Rent Controlling Authority has rightly allowed the

petition and dismissed the suit.

6. On careful examination of the petition for eviction filed on behalf of the petitioner it reveals that the petitioner is landlord and the respondent is

tenant of the suit premises. In his reply to the application under Order VII Rule 11 of the Code the petitioner has admitted the fact that the original

tenant was Shakina Bi, mother of the petitioner. The petitioner is having two brothers & three sisters, he is co-owner of the property and has

succeeded the same on the death of his mother. The respondent alone is the tenant and he is the successor of deceased tenant Shakkulal Gupta. It

is not disputed that the petitioner is successor of deceased Shakina Bi, mother of the petitioner, and is having right over the rented accommodation,

he is not the sole owner but partial owner, therefore, the petitioner is competent to file petition for eviction as a co-owner or partial owner of the

property.

7. As regards maintainability of the revision, any order passed by the Rent Controlling Authority may only be challenged u/s 23-E of the Act.

Section 23-E of the Act envisages procedure and power of the High Court in the course of hearing of revision. The provisions of Section 23-E of

the Act read as follows:-

23-E. Revision by High Court.--(1) Notwithstanding anything contained in Section 31 or Section 32, no appeal shall lie from any order passed by

the Rent Controlling Authority under this Chapter.

(2) The High Court may, at any time ""suo motu"" or on the application of any person aggrieved, for the purpose of satisfying itself as to the legality,

propriety or correctness of any order passed by or as to the regularity of the proceedings of the Rent Controlling Authority, call for and examine

the record of the case pending before or disposed of by such Authority and may pass such order in revision in reference thereto as it thinks fit and

save as otherwise provided by this section, in disposal of any revision under this section, the High Court shall, as far as may be, exercise the same

powers and follow the same procedure as it does for disposal of revision u/s 115 of the Code of Civil Procedure, 1908 (V of 1908) as if any such

proceeding of the Rent Controlling Authority is of a Court subordinate to such High Court;

Provided that no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of

the date of the order sought to be revised.

Revisional power u/s 115 of the Code reads as follows:-

115. Revision.--(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and

in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or

other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or

other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either in the High Court or to any

Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the

High Court.

Explanation.--In this section, the expression ""any case which has been decided"" includes any order made, or any order deciding an issue, in the

course of a suit or other proceeding.

8. Sub-section (1) of Section 115 of the Code gives power to the High Court to examine the legality & propriety in terms of clauses (a), (b) & (c)

of that Section relating to the case decided by any Court subordinate to such Court, but the proviso to sub-section (1) of Section 115 of the Code

restricts the power of the High Court to interfere in exercise of revisional jurisdiction relating to any order passed in the course of a suit or other

proceeding. The High Court is competent to exercise the revisional jurisdiction in terms of clauses (a), (b) & (c) of sub-section (1) or Section 115

of the Code in relation to the case decided by the Courts subordinate to High Court and the High Court is also competent to exercise the revisional

jurisdiction in terms of proviso to sub-section (1) of Section 115 of the Code in relation to the order passed by the subordinate Court in the course

of a suit or other proceeding. Proviso to sub-section (1) of Section 115 of the Code is related to the order passed in the course of a suit or other

proceeding. The present case does not fall under the proviso to sub-section (1) of Section 115 of the Code, but it falls under sub-section (1) of

Section 115 of the Code and the revision filed on behalf of the petitioner is competent.

9. Admittedly, the petitioner has not alleged in his revision petition or reply to the application filed under Order VII Rule 11 of the Code that he is

not owner or co-owner or that the respondent is not the tenant.

10. In the case of Mayor (supra), the Apex Court has held that the Courts are required to examine the question of tenability under Order VII Rule

11 of the Code on the basis of the allegations made in the plaint and not on the basis of the allegations made in the written statement. Paras 10 &

11 of the judgment read thus.

10. Under Order VII, Rule 11 of the Code, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the

relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the

additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by

any law. Rejection of the plaint in exercise of the powers under Order VII, Rule 11 of the Code would be on consideration of the principles laid

down by this Court. In *T. Arivandandam Vs. T.V. Satyapal and Another*, this Court has held that 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 Court should exercise its power under Order

VII Rule 11 of the Code taking care to see that ground mentioned therein is fulfilled. In *Roop Lal Sathi Vs. Nachhattar Singh*, this Court has held

that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII, Rule 11 of the

Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII, Rule

11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order VI, Rule 16 to strike out the paragraphs in

absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may

tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the Court. In *I.T.C. Limited Vs. Debts*

Recovery Appellate Tribunal and Others, it was held that the basic question to be decided while dealing with an application filed by the defendant

under Order VII, Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been

projected in the plaint with a view to get out of the said provision. In *Saleem Bhai and Others Vs. State of Maharashtra and Others*, this Court has

held that the trial Court can exercise its powers under Order VII Rule 11 of the Code at any stage of the suit before registering the plaint or after

issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and

the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property Vs. State Bank*

of India Staff Association, this Court has held culled out the legal ambit of Rule 11 of Order VII of the Code in these words:

There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a

course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain

its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and

not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of

its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as

a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of allegations made by the defendant in his written statement or

in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if

it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint

discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those

averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the

material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to

misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires

determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In

the present case, the averments made in the plaint, as has been noticed by us, we disclose the cause of action and, therefore, the High Court has

rightly said that the powers under Order VII, Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

11. Copy of the plaint and reply of the application filed under Order VII Rule 11 of the Code clearly show that the plaintiff is owner, landlord and

co-owner of the rented premises and the respondent is tenant of the suit premises. But learned Rent Controlling Authority has dismissed the suit on

the basis of the allegations made in the written statement and the application filed under Order VII Rule 11 of the Code. The Rent Controlling

Authority has exceeded the jurisdiction vested on it and thereby committed illegality. The order impugned is not sustainable and deserves to be set

aside. For the foregoing reasons, the revision is allowed and the order impugned is set aside. The case is remitted back to the Rent Controlling

Authority for trial in accordance with law, Parties are directed to be present before the Rent Controlling Authority on 22nd June, 2009. No order

as to costs.