

HRP SUIT NO. 197 OF 2023

ORDER BELOW EXH.19

**(An application for rejection of Plaintiff under Order 7
Rule 11 (a) & (d))**

Coram: Hiren J. Thaker, Judge.

1. The defendant has made this application under Rule 11 (a) & (d) of Order 7 of The Code of Civil procedure.
2. The defendant has raised the following contentions :
 - The property description is incorrect.
 - The document, i.e. the rent receipt, does not include a description of the suit property.
 - The landlord of the suit property is Kokilaben, and the rent receipt was issued by Govindbhai, who has never been a landlord.
 - Although the premises is a residential property, the plaintiff uses it for commercial purposes.
 - The plaintiff has not filed the rent agreement with the court.
 - The defendant has been a landlord since 2005, but the suit was filed in 2023, so the suit is barred by the law of limitations.

Thus, based on the foregoing grounds, the defendant has sought rejection of the plaintiff under C.P.C. Order 7 Rule 11.

3. The plaintiff vehemently opposed the application, claiming that the defendant failed to specify which statute barred

the plaint. It is also argued that the defendant has expressly stated a cause of action in paragraph 7 of the plaint. The plaintiff has submitted documentary evidence establishing the parties' relationship as landlord and tenant. Thus, this application serves no purpose other than to delay the case and will be denied at all costs.

4. I heard both the learned Advocates of the parties. I perused the application and documents produced therewith and considered the legal provisions related thereto.

4.1 The learned advocate of the defendant has placed reliance on the following judgment. I have respectfully gone through these precedents.

1. State of Rajasthan Vs. M/s. Swika Propertties and others (Civil appeal 2085 of 1985),
2. Om Prakash Shrivastva Vs. Unioin of India (Laws(SC)-2006-7-16)

The core issues of these judgments pertain to territorial jurisdiction. There is no dispute involved regarding local jurisdiction. Hence, these judgments are not applicable to this case.

3. Suraj lamp & Industries Pvt. Ltd. Vs. State of Haryana (2011(6) Supreme 373) This judgment explains the effect of transfer through general power of attorney; here the case is between the landlord and tenant and therefore no issue relating to transfer through power of attorney involved in this case.

4. Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal (Laws(SC) 2017-482) This case is based on wakaf property. The defendant has not taken such contentions in this application. Therefore this judgment is not relevant to this case.
5. Khatunben Mohammedbhai Polara Vs. Shaukathussain Mohhmed Patel (2019(4)GLR 2990) In this case Hon'ble High Court laid down that suit for setting aside registered sale deed required to be brought within three years from date of registration.
5. The present application moved under rule 11 of Order 7 of C.P.C.. According to the settled principle, an application under this rule is a summary inquiry in which the court must consider only the plaint and the documents filed with it, without considering the defendant's defense, reply, or documents filed by him. So, while deciding on this application, the claim application and supporting documents were read.
6. Firstly as per the contention of the defendant it has not been shown when the cause of action accrued to the plaintiff so that the plaint is sought to be rejected. It is well settled that in a dispute under Order 7 Rule 11(a) the cause of action is not to be decided because the cause of action is not clearly stated but it is the duty of the court to consider the entire plea and decide whether the cause of action is stated therein or not.

The plaint in this case reveals that there is a clear allegation against the defendant that has arisen since the defendant threatened to take possession of the suit

property by force and since the plaintiff informed the police control on August 25, 2023. For the purpose of defending his tenancy rights in the property, the plaintiff has filed this suit under the Rent Act. At this point, the only thing to do is determine whether the plaint contains a reason, which is in this case explicitly stated. It is not necessary to determine whether this reason is true or false; therefore, the defendant's contention regarding Rule 11(a) is not sustainable.

7. According to paragraph 7 of the plaint, the cause of action began on August 25, 2023, so this suit is well within the limitation period, and thus the argument under rule 11(d) is also untenable.
8. So far, the dispute over the production of a false rent receipt has not been resolved at this stage because the court, during the inquiry under Order 7, cannot determine the validity or genuineness of the document because it is a matter of evidence.
9. It is also stated that the rent receipts produced by the plaintiff were issued by one Govindbhai, who was never the owner of the suit property. In contrast, the learned advocate for the plaintiff contended that Govindbhai was the husband of the previous owner who was receiving rent from the defendant. Furthermore, under the Rent Act, it is not necessary to be a property owner to become a landlord. And because the variety of rent receipts requires evidence, this argument cannot be sustained at this juncture.

At the cost of repetition, it should be noted that the court must consider only the facts stated in the plaint

during this inquiry, and thus whether Govindbhai was the landlord of the property or not is a question of fact, which requires evidence to prove or falsify. At present, the plaintiff is in possession of the suit property and this possession is evident in the rent receipt (mark 4/1) and municipal tax bill(mark 4/2). I agree with the learned advocate for the plaintiff that this fact cannot be decided without taking evidence. Thus, there is no reason to reject the plaint.

10. Hon'ble Apex court in the case of *Dahiben Vs. Arvinbhai Kalyanji Bhansai (2020 SCC On line 563, Para 12.5)* held that *in exercise of power under order 7 rule 11 of Code of civil procedure, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out, it is further held that, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration* The same ratio was also laid down in the case of *Shrihari Hanumadas Totala vs. Hemant Vithal Kamat & Ors. (2021 AIR (Civil) 933)*.

In light of the preceding principle, it is not permissible for this court to consider the written statement or document produced by the defendant in deciding the application under Rule 11 of Order 7 of the Code.

11. In light of the foregoing, the plaint contains a cause of action and is not barred by the law of limitations. Therefore, I make the following order in the interest of justice.

ORDER

1. This application is hereby rejected.
2. No order as to cost.

Pronounced & signed in the open Court today i.e. 19th
day of December, 2023.

Date : 19/12/2023
Place : Ahmedabad

(Hiren Jasvantray Thaker)
Code No. GJ-00940
Chamber Judge, Small
Cause Court no.13
Ahmedabad.