

Order under Exh.11
(Application under O.7 R.11)

Statement of the Application:-

1. Present application is moved at Exh.11 by deft. under **O.7 R. 11 of the Code of Civil Procedure, 1908** (for short "the Code") by stating that plaintiffs have filed present suit without any cause of action. Suit is under valued. Suit is filed with malafide intention by suppressing material facts. Important and material facts are not noted neither explained in the plaint. Impugned contract was executed on 17.10.2016. But it is challenged now. Hence, present suit is barred by law of limitation and also by mis-joinder of parties. Hence, present suit deserves to be rejected under O.7 R.11 of the Code.

Submission of the Plaintiffs :-

2. At Exh.15, plaintiffs have submitted the written reply for the said application and after refusing the allegations of the application, they have further submitted that present application does not contain any fact which is relevant for deciding application under O.7 R.11. Present application is filed by false motive. Hence, it is required to be rejected.

Arguments :-

3. Heard both the Id.Advocates of both the parties. Ld.Advocate Mr.P.P.Gosai appearing for defendant and Ld.Advocate Mr.R.H.Thakkar on behalf of plaintiffs have argued as per above stated facts. Taken them into consideration. None of them have argued on legal aspects of present application.

Reasons and Appreciation of Record:-

4. Present suit is filed by the plaintiffs in respect of the accounts, declaration and injunction. Present application under Exh.11 is moved under O.7 R.11 of the Code. **But, the application does not bear any specific clause as mentioned under O.7 R.11.** It is specifically provided under O.7 R.11 that plaint can be rejected under this provision only when plaint suffers from any legal infirmity as provided from clause (a) to (f). Not except that. But in present suit, none of the contents as provided in clause (a) to (f) are shown by the defendant.

relying upon which the said provision can be taken into consideration for rejection of the plaint. Application contains only factual aspects. None of them are in respect of purely legal aspect. It is not shown in the application that how defenant is moving this application under O.7 R.11.

5. It is settled principle of law that at the time of deciding the application under O.7 R.11, court has to look into the record produced by the plaintiffs only alongwith the suit and the entire scenario presented by the plaintiffs on record at the time of filing the suit. No evidence of defendant is required to go through. However, if court finds it fit in the interest of justice and from the perusal of the plaint as well as documentary evidences, it transpires to the court that the plaintiffs have suppressed material facts, it can verify and go through the documentary evidences and facts produced by the defendant too. When there is application before Court, it is duty of the Court to scrutinize the entire scenario of the case. Without that, no justifiable order can be passed.

6. In present case, looking to the facts submitted in the plaint, there seems no legal infirmity at present stage. Facts metnioned in the plaint are of the nature that they cannot be decided without recording the entire evidence. Without that no justifiable order can be passed. Present application, as stated above, neither bears any particular clause of O.7 R.11 nor it has any such content which can draw this court to understand that under which clause, this application is moved. Further, it is also clear that present suit is neither barred by want of cause of action nor limitation nor any other reason as stated in the application,at this stage. Except clearly barred by law, each plaint requires to be decided on merit. When a litigant has come to court with a case, he has right to proceed with the suit in accorance with the law. Prior to that, he cannot be precluded. In present case, there is no reason to reject present suit under O.7 R.11. Present application does not have any legal base.

7. Looking to the facts and circumstances of the present suit, submissions of both the parties, documentary evidences produced by the plaintiffs as well as defendant and for the reasons and statements noted above, this Court is of the opinion that present application is filed with no legal cause. Neither it bears any substance. Hence, it deserves to be rejected. Therefore, following order is passed under Exh.11:-

O R D E R

1) Application at Exh.11 is hereby rejected.

2) No order as to costs.

Pronounced in the open Court today on 18th day of March, 2024.

Date:-18.03.2024
Deodar.

(Dr.Manjudevi Shardaprasad Pande)
Principal Sr.Civil Judge,
Deodar,District : B.K.
Code No.GJ:00860