



IN THE COURT OF ADDL. CIVIL JUDGE, RADHANPUR
RCS NO. 06 / 2021

In matter of :

1. Uttar Gujarat Vij. Company Ltd. (UGVCL)
Through Deputy Engineer
Add: UGVCL office, Radhapur , Patan

...Plaintiff

V/S

1. Patel Ninaben and ors
Add: Bandhwad , Tal. Radhanpur, Dist. Patan.

... Defendants

ORDER BELOW EX-6

Appearance:

Ld Advocate for Plaintiffs on Record: Mr. M. H. Mulani

Ld. Advocate for Defendant: Mr. F. M. Shiekh

1. Read the application ex-6. Perused the records of the present case. Heard the arguments of both Ld. Advocate. The ld advocate for the defendant applicant has said that his argument is as os per his application. Perused the written argument ex- 12 of ld advocate for the plaintiff. The said application is for

rejection of plaint. The matter was adjourned today to allow for the submission of additional case law (authority), as no authority had been presented. Consequently, the order pertaining to application ex-6 is pronounced today.

Facts of the case:

2. The case of the plaintiff is that Urja Vikas Nigam Limited, a Gujarat government enterprise, oversees North Gujarat Electricity Company Limited (UGVCL), which manages electricity supply and sales. The plaintiff, serving as the Deputy Engineer at the Radhanpur sub-division office, manages the electricity connections, including those of the defendants. The defendants' predecessor, Shri Devabhai Meghabhai, held a residential electricity connection with customer number 72170/00049/6 and had an agreement to pay bills and follow regulations. After Shri Devabhai Meghabhai's death, the defendants, as his legal heirs, continued using the connection. On 30/10/2018, an inspection revealed unauthorized usage, leading to the disconnection of the connection and the issuance of a bill for electricity theft amounting to Rs. 76,527.23. Despite multiple notices and reminders, the defendants did not make the payment. The plaintiff then sought to recover Rs. 93,132.23, including interest, from the defendants, and issued further notices threatening disconnection of their other connection if the payment was not made. Defendant No. 3 responded evasively to these notices. An FIR for the theft was filed, and the case is pending in the Radhanpur M.E. Sessions Court. The plaintiff is entitled to recover the amount from defendant No. 3's other connection if necessary and has filed a case for permanent injunction. The court directed the temporary disconnection and later restoration of the connection. The plaintiff seeks recovery of Rs. 1,09,968/- including interest, delayed payment charges, court costs, and other necessary orders.

Arguments:

3. The learned advocate for the defendant argues that The plaintiff company filed a claim against the defendants on 03/03/2021 in the Honorable Court, seeking to recover an alleged amount of Rs. 1,06,998/-, which includes Rs. 1,00,658/- as the principal amount and interest at 12% per annum from the date of the claim until recovery. Prior to filing this claim, the plaintiff company had already lodged a false complaint against Defendant No. 3 on 21/11/2018 under

Mehsana G.U.V.N.L. Second Crime Reg. No. 1289/18. A charge sheet related to this complaint was filed against Defendant No. 3 on 08/08/2019. Following the charge sheet, the case was numbered as Special Electricity Case No. 06/2019 before the Radhanpur M.E. Sessions Judge. The court issued a summons for Defendant No. 3, who appeared before the court. On 09/09/2019, the Radhanpur M.E. Sessions Judge framed charges for the Special Electricity Case No. 06/2019, including the issue of "civil liability," as directed by the court. There were no objections from the defendants regarding this order. The case is currently pending at the evidence stage, and copies of the charge sheet and charge framing are provided separately. The plaintiff has acknowledged in Paragraph 11 of their claim that there was a mistake in referring to Special Electricity Case No. 100/19 instead of Special Electricity Case No. 06/19. Since the Honorable Criminal Special Court is already handling the case related to the alleged incident and has issued an order on "civil liability," the current claim by the plaintiff is not maintainable in this court and should be dismissed or returned. Therefore, considering the above facts, it is respectfully requested that the plaintiff's claim be dismissed under Order 7, Rule 10 and 11(d). Additionally, it is requested that the defendants be awarded the costs incurred from the plaintiff.

4. The defendant's counsel contended that the plaintiff's complaint lacks a clear cause of action and that the plaintiff has suppressed material facts and not acted with transparency, withholding crucial information. Furthermore, they argued that the plaintiff's case appears to be time-barred on its face; he further argues that needful stamp duty has not been paid by plaintiff ; further argues that the relief which is sort is barred by some law and this court has no jurisdiction to try this case; further says that plaintiff fails the compliance of order 9 of the CPC. Hence seeks the plaint to be rejected. The plaintiff has argued that the plaint shows proper cause of action, the plaint is within limitation and since the suit is for recovery of money that suit is tenable and is within the jurisdiction of this court.

5. The learned advocate for the plaintiff argues that the defendant's application dated 16/07/2021 under C.P.C. Order 7, Rule 11 is neither valid nor legally tenable. Contrary to the defendant's claim in Paragraph 2, our electricity company did not file a false complaint against them on 22/11/2018 under Mehsana U.G.V.C.L. Second Crime No. 1286/18. The charge sheet for the said case has been filed, and the facts in Paragraph 2 have no relevance to the current application. As mentioned by the defendant in Paragraph 3, the fact that the Additional Sessions Judge on 09/09/2019 decided that the issue of civil liability would be addressed during the charge framing does not relate to the current application. The case remains pending before the Criminal Court and no decision has been made yet. The application submitted by the defendant based on these details is judicially unsound. The facts presented are merely defensive in nature and are not relevant at the current stage of the case. The plaintiff's claim was filed on 03/03/2021, and the claim arises from an issue that originated on 30/10/2019. It is within the court's jurisdiction to determine the validity of the claim and the recovery amount for the alleged electricity theft. The charge framing by the Additional Sessions Judge is not relevant to the jurisdiction of this court. Further submissions will be made in person during the hearing. It is requested that the defendant's application dated 16/07/2021 under C.P.C. Order 7, Rule 11 be dismissed with costs.

Principles Guiding Rejection of Plaintiff

The presentation of a plaintiff, i.e. the pleading of the plaintiff in a suit; marks the institution of a civil suit. The Civil Procedure Code, 1908, provides for the remedy of rejection of plaintiff under Order VII Rule 11, on certain specifically states grounds. Order VII Rule 11 provides:

"Court shall reject a plaintiff:

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

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

Object:

Rejection of plaint weeds about frivolous, vexatious and improper plaints at the very outset, thus, saving judicial time and resources. It was observed in the case of Azhar Hussain v. Rajiv Gandhi that the entire purpose of conferment of such powers under O7 R 11 is to ensure that a litigation, which is meaningless and bound to prove abortive is not permitted to occupy the time of the courts, and exercise the mind of the respondent. Such a remedy is necessary to put an end to the sham litigation, so further judicial time is not wasted, as observed by the Hon'ble Supreme Court of India in the case of Dahiben v. Arvindbhai Kalyanji Bhanusal [(2020) 7 SCC 366]]. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by apex court that clever drafting creating

illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

OVII R11: Mandatory power of the court, not a matter of discretion

The Hon'ble Supreme Court, in its 2020 ruling of Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thru Lrs (supra), emphasized that if any of the grounds specified in clauses (a) to (e) are met, the plaint "shall" be rejected. If the plaintiff fails to disclose a cause of action or if the suit is barred by any law, the Court is obligated to reject the plaint. Therefore, the provisions of Order VII Rule 11 are not discretionary; they are mandatory. If the plaint falls under any of the clauses outlined in Rule 11, the court is bound to reject it and cannot exercise discretion in this regard.

Conclusion to be drawn from :

When considering an application under Order VII Rule 11 CPC, the court is tasked with examining the allegations contained within the plaint exclusively, along with any documents submitted alongside it. The stance taken by the defendant holds no relevance in this assessment. This principle has been reaffirmed in the case of Dahiben vs. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366, wherein it was stated that the test for exercising the power under Order 7 Rule 11 is whether, upon considering the plaint's averments in conjunction with the accompanying documents, they would lead to the issuance of a decree. This standard was established in the case of Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I (2004) 9 SCC 512 too.

Ground of Res Judicata as ground of Rejection of plaint under Order 7 rule 11:

A recent illustration of this principle can be found in the case of Srihari Hanumandas Totala v. Hemanth Vithal Kamat & Ors.[2021 SCC OnLine SC 565]], where the court addressed the issue of res judicata as a ground for rejecting the plaint. The court emphasized that determining whether a suit is barred by res judicata necessitates considering several factors, including whether the previous suit was decided, whether the issues in the subsequent suit were directly and substantially in issue in the former suit, whether the parties were the same or claiming through them, and whether these issues were adjudicated and finally decided by a competent court.

The bench underscored that adjudicating the plea of res judicata requires analyzing the pleadings, issues, and decisions in the previous suit, which extends beyond the scope of Order 7 Rule 11 (d) where only the statements in the plaint are considered.

Reason:

6. The plaintiff's claim is based on an alleged instance of unauthorized electricity usage discovered on 30/10/2018. An inspection report revealed unauthorized usage, leading to a bill for Rs. 76,527.23. The plaintiff's demand for Rs. 93,132.23, including interest, was based on multiple notices and reminders sent to the defendants.
7. The criminal proceedings cited by the defendant (Mehsana G.U.V.N.L. Second Crime Reg. No. 1289/18 and Special Electricity Case No. 06/2019) are related to the same instance of electricity theft but involve criminal charges and civil liability issues yet to be adjudicated in that forum. The criminal court is competent to decide on civil liability only upon a conviction. This does not preclude the civil court from adjudicating the matter independently. As affirmed by the Hon'ble Supreme Court in the case of *North Delhi Power Limited (Now Known As Tata Power Delhi Distribution Ltd.) Versus Devinder Singh 2017 (0) AIJEL-SC 63368* which held and said “ *By no stretch of imagination can it be stated that a civil suit would be within the jurisdiction of*

such Court. ”, hence civil liability can still be decided by the civil court even if criminal proceedings are underway.

8. The plaint filed on 03/03/2021 is within the limitation period for recovery of dues arising from the alleged unauthorized electricity usage on 30/10/2018.
9. The plaint discloses a cause of action related to the recovery of dues, independent of the ongoing criminal proceedings. The claims of time-bar and procedural non-compliance are issues to be addressed during the trial rather than grounds for rejection under Order VII Rule 11.
10. In the interest of justice, following orders are made:

Order

1. The present application for rejection of plaint is hereby rejected.
2. No order as to cost.

The order is read and announced today in open court.

Dharanth. R. Patel

Addl. Civil Judge & J.M.F.C.

JO CODE GJ01753

Date:- 28.08.2024

Place: Radhanpur, Patan