

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
JMFC., AT: MAGADI**

Present:

Sri.Hanumanth Satwik.,LL.M.
Addl. Senior Civil Judge & JMFC., Magadi

Dated : This the 20th day of May 2021

M.V.C.No.76/2015

Petitioner : Sri. K..M.Kotresha,
S/o late K.M.Hemagiriaiah,
Aged about 33 years,
R/at C/o Tejamurthy,
Thirumale Main Road,
Near Maramma Temple,
Thirumale, Magadi Town,
Ramanagara District.

(By **Sri. B.C.S.**, Advocate)

--V/s--

Respondents : 1 Sri. Narasimhamurthy,
S/o Venkata Narasimhaiah,
Aged about 41 years,
R/at Adakamaranahalli,
Bachenahatti Post, Kasaba Hobli,
Magadi Town, Ramanagara District.

2. Royal Sundaram Alliance Insurance
Company Limited,
Hosur Road, Bengaluru – 560 027.

(Respondent no.1 By **Sri. M.N.**, Advocate)

(Respondent no. 4 By **Sri. K.N.**, Advocate)

ORDER ON IA NO.II

The present petition is filed seeking award for a sum of Rs.25,00,000/- with interest at the rate of 18% per annum.

2. The present application has been filed by respondent no.2 U/o VII rule 11 (a) & (d) of C.P.C. praying this court to reject the petition against them only. The respondent submits that as on the date of the accident there was no policy in force. The petitioner deliberately did not mention the period of validity of the policy. It is apparent on the face of the policy that it is not covered the risk on the date of the accident. The petitioner has unnecessarily made them as party to the proceedings. In this regard respondent no.2 prays as above.

3. The petitioner orally objected to allow the application and prays to reject the application.

4. Heard both counsel.

5. Considering the contentions of both counsels, following points arise for my consideration;

Order

M.V.C.No.76/2015

1. Whether respondent no.2 has made out grounds to reject the petition as sought for?
 2. What order?
6. My findings for the above points are as under ;

Point No.1 : In the negative

Point No.2 : As per final order
for the following ;

REASONS

7. **Point No.1**:- It is the case of respondent no.2 that as on the date of the accident there was no policy in force. They have been unnecessarily made as party to the proceedings. In this regard, I have perused the petition. Be it stated, whether as on the date of the accident the policy was in force or not is the subject matter of trial and at this stage of the case the said question cannot be decided.

8. Even otherwise, in the case at hand, the perusal of the application shows that it is not the case of respondent no.2 that there is no cause of action against the other respondent. Be it stated, the present petition is one for compensation. Further,

petition indicates that there exist cause of action against respondent no.1. In this circumstances, as there exist cause of action against respondent no.1, I am of the view that the petition cannot be rejected against particular respondent. In this regard I am supported by the decision of Hon'ble Supreme Court of India between **Sejal Glass Ltd. vs Navilan Merchants Pvt. Ltd.** cited in (2018) 11 SCC 780, wherein the Hon'ble court held thus;

“We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.”

In this regard, I am further supported by the decision of Supreme court of India between **Madhav Prasad Aggarwal & Anr. Vs. Axis Bank Ltd. & Anr** cited in (2019) 7 SCC 158, wherein Hon'ble court held as below;

“We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point.

“In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of

action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC.

The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.”

In the case at hand, respondent no.2 claims that the petition does not disclose cause of action against him and hence the petition is liable to be rejected. It is not the case of respondent no.2 that there is no cause of action against the other respondents. So also, reading of the petition shows that there exist cause of action against respondent no.1. In this circumstances in view of the law laid down by the Hon'ble Supreme court of India, I am of the view that petition against respondent no.2 cannot be rejected.

9. In the case at hand, whether as on the date of the alleged accident policy was in force or not is the subject matter of trial. Further, in view of the law laid down by the Hon'ble Apex Court, petition cannot be rejected against respondent no.2 and 4. In this view of the matter considering the application and the petition and in view of the law laid down by the Hon'ble Supreme Court of India, I am of the view that respondent no.2 failed to show that the present petition warrants rejection against him. Resultantly, point no.1 is answered in the negative.

10. **Point no.2**:- In view of reasons on point no.1, I proceed to pass the following,

ORDER

**IA No.II filed U/o VII rule 11(a) & (d) of C.P.C.
by respondent no.2 is hereby rejected on cost of
Rs.100/-.**

(Dictated to the stenographer, typed by him corrected by me and then pronounced in the open court on this the 20th day of May 2021.)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**