

ORDER BELOW EXH. 97 IN SPL. CIVIL SUIT NO. 295/2013.

This application is on behalf of defendants no. 1,3,4,6 to 9 for rejection of plaint vide Order VII Rule 11 of the Code of Civil Procedure.

2] This application is resisted on behalf of plaintiff as per say Exh. 104.

3] Points for the determination and my findings thereon for the reasons stated below :-

POINTS**FINDINGS**

I. Whether grounds are justified for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure ?

...No

II. What order ?

...Application is dismissed.

REASONS

4] Perused application, say filed. Heard.

AS TO POINTS NO. I AND II :

5] Plaintiffs no. 1 and 2 have filed present suit against defendants no. 1 to 9 in respect of suit properties mentioned in para no. 1 of the plaint for dissolution of partnership

firm and distribution of assets, further for partition and separate possession of the suit properties. Some of the Defendants are appeared and resisted the claim as per their written statement. Initially defendants moved application vide Exh. 33 for framing preliminary issue under Section 9-A of the Code in view of arbitration clause. The said application is dismissed as per order dated 20/7/2015. The application on behalf of defendant no. 8 under Section 8 of the Arbitration and Conciliation Act, vide Exh. 73 is dismissed as per order dated 20/7/2015. The application on behalf of defendants no. 2 and 5 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure vide Exh. 93 is dismissed as per order dated 20/7/2015.

6] Now again this application for rejection of plaint on behalf of other defendants no. 1, 3, 4, 6 to 9. According these defendants, the prayer clauses a to q are not connection with the suit. Defendants no. 6 to 9 are the partnership firm. Hence prior notice is required. Defendants no. 6 to 9 are not concerned with the claim. The suit is bad for mis-joinder of cause of actions. The suit is not maintainable.

7] This application is strongly opposed on behalf of plaintiff as per their reply. According to them, this application is not tenable as it is barred by principle of Res-judicata. The present application is filed to delay the matter. Section 43 of the Partnership Act deals with dissolution by notice is one of the way

for dissolution of firm whereas Section 44 of the Act envisages dissolution through court is also one of the mode of dissolution. The plaint disclosed cause of action and the suit is cognizable by this court. Hence prayed for rejection of this application.

8] The similar application is decided by this court as per order below Exh. 93. The said application was presented by defendants no. 2 and 5 and the present application is filed by other defendants. Though the grounds mentioned for rejection of plaint are almostly similar however different defendants have raised this objection in this application. Therefore, bar of constructive Res-judicata will not apply for presenting the application. Howsoever the observation in earlier order below Exh.93 apparent that plaint discloses a cause of action therefore it is not required to make an elaborate inquiry about the genuineness of the pleadings in plaint. Hence the plaint discloses a cause of action.

9] The another objection taken by the present defendants in respect of mis-joinder of party and this is not a ground for rejection of plaint vide Order I Rule 9 of the Code. The suit is for dissolution of firm and distribution of his assets and according to the plaintiff vide Section 44 of the Act, dissolution of the firm by the court is one of the ground for dissolution of partnership. The further reliefs claimed are of partition and separate possession hence it is cognizable by the Civil Court. The plaintiffs whether entitled to relief claimed could be decided after

hearing of the suit but at this stage, there is no express bar of law which preclude plaintiffs from claiming reliefs in this suit.

10] The defendants have questioned maintainability of the suit but not on the ground of express bar of law but according to his objections in written statement and the grounds mentioned in the application for rejection of plaint. While dealing with this application the averments of plaint are germane hence this objection taken by the defendant cannot be a ground for rejection of the plaint. Therefore, the grounds mentioned for rejection of plaint on behalf of these defendants are not well founded. Hence I answer Point No. I in the negative. With this, I pass following order ;

ORDER

Application vide Exh. 97 is dismissed.

Pune

Date : 21/04/2016

(K. G. Paldewar)
4th Additional Judge,
Small Causes Court and
Jt. CJSD, Pune.

I affirms that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of the Steno : D. H. Gosavi. (Higher Grade)

Court Name : Shri. K. G. Paldewar,
4th Additional Judge,
Small Causes Court and
Jt. CJSD, Pune.

Date : 21/04/2016

Exh-97 signed by : 29/04/2016
presiding officer on

Exh-97 uploaded on : 29/04/2016