

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Money Suit 25 of 2021
Renumbered as MS (COM) 40 of 2021
CNR No. WBSP18-000086-2021

Order No.34

Date:07.06.2024

In the matter of:

Suit for recovery of money,
declaration and injunction
valued at Rs. 6,64,32,911/-.

AND

In the matter of:

Machino Techno Sales Limited.

Vs.

Machino Transport Private
Limited.

Order

Today is fixed for order of the applications being I.A. No. 03 of 2021 and I.A. No. 05 of 2023.

Both sides have filed their respective haziras.

Now, the record is taken up for passing necessary order.

I.A. No. 03 of 2021

1. The instant application has been filed by the defendants under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) for rejection of the plaint of the instant suit.
2. The plaintiff claimed in the instant suit that the plaintiff is the owner of a piece of land admeasuring about 20,200 sq. ft. situated at 48A, Taratala Road, Kolkata 700 066, P.S. Taratala, by a conveyance deed dated 18.08.2001. The said property is used for the purpose of warehousing to be let out to the interested parties who require the warehouse space to store their goods and merchandize.
3. The plaintiff alleged in the said plaint that on or about December, 2018 the plaintiff has come to know that the subject property was wrongfully and illegally leased out by the defendants to one M/S Chaizup Beverages LLP from 2010-2011 to 2017-2018 for rental aggregating to Rs. 4,04,000/- per month @ Rs. 20/- per sq ft in respect of the subject property for warehousing purposes and GST to be levied in addition thereto. This illegal practice had continued

from 2010-11 to 2019-2020 by repetitive encumbrances being created by letting out the subject property for a period of 11 months and period being rolled over subsequently thereafter. Hence, the plaintiff filed the instant suit.

4. As it appears from the record that along with the instant suit, the plaintiff also has filed an application under Order 39 Rule 1 and 2 of CPC seeking various interim reliefs and moved the same *ex parte*, although this Court did not grant any *ex parte* relief on that stage. Thereafter, pursuant to entering appearance, the defendants filed the present application.

5. In the instant application the defendants/petitioners sought for rejection of the plaint mainly on three grounds being (i) The present suit is barred under Order VII Rule 3 of CPC on the pretext that the schedule annexed to the plaint for describing the subject property is vague and unspecified, (ii) The present suit is hit being barred under Section 9 and Section 10 of CPC, and Section 430 of the Companies Act, 2013 allegedly as the property at 48A, Taratala Road, is the subject matter of proceeding pending before the NCLT, Kolkata in C.P. No. 42(KB) of 2020 arising out of Scheme Proceedings filed before the Hon'ble Calcutta High Court and (iii) The plaint does not disclose any cause of action.

6. In respect of first ground, defendants/petitioners contended that in terms of Order VII Rule 3 of CPC where the subject matter of the suit is immovable property, the plaint should contain a description of the property sufficient to identify it. It is further mentioned that in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. The schedule to the plaint mentions that a portion of land admeasuring 18,657 sq. ft. along with an area of 600 sq. ft. out of total land situated at 48A, Taratala Road, Kolkata 700 066 is the suit premises. The precise demarcation of the suit premises has not been mentioned in the schedule and in terms of the schedule, the suit premises is an unidentified area of land which is a part of a larger premise. Neither are the boundaries mentioned nor are the precise particulars of the suit property mentioned. Therefore, there is complete non-compliance of Order VII Rule 3 of CPC.

7. Ld. Counsel for the defendants referred to a decision of the Hon'ble High Court of Orissa in the matter of *Bandhu Das and Ors. vs. Uttam Charan Pattanaik*¹ and the decision of the Hon'ble High Court of Madhya Pradesh

¹Reported in AIR 2007 Ori 24.

(Gawalior Bench) in matter of *Laxman Singh vs. Jagannath*² and submitted that if the schedule to the suit property is not precisely mentioned, where, the subject matter of the suit is immovable property, no decree can be passed. Even if a decree is passed, it becomes incapable of execution.

8. Ld. Counsel further submitted that it is in such circumstances that Order VI Rule 1(2) of the CPC mandates that every plaint shall comply with the rules contained in Order VII. In this case, the plaint is non-compliant of Order VII Rule 3. In accordance with Order IV Rule 1(3), the plaint shall not be deemed to be duly instituted, unless it complies with the requirements specified in sub rules 1 and 2. Therefore, this suit is deemed not to be instituted and the plaint be rejected and/or suit be dismissed.

9. On contrary, in respect of first point, plaintiff/respondent submitted that more than adequate and sufficient particulars with proper and correct description in respect of the subject properties have been provided in the schedule annexed to the plaint to assist the Ld. Court and the same will enable the Ld. Court to identify the properties in dispute.

10. Ld. Counsel appearing for the plaintiff/respondent submitted that regardless of above, assuming but not admitting the said allegations to be true and correct, it is settled law that the provisions of Order 7 Rule III are directory in nature and if any confusion arises as regards the identity of the properties and/or inadequate description, the Court is entitled to call for additional particulars and such lacunas, if any, are curable in nature. As regards, Ld. Counsel placed reliance on the case of *Dwaraka Prasad Agarwalla vs. Nil Kamal Bezbarua*³. He further submitted that the object and intent of legislature behind Order VII Rule 3 is to make the immovable properties which is the subject matter of the suit identifiable for the Hon'ble Court to pass proper decree as required under Order 20 of CPC. Be that as it may, pertinently, the same does not go to the root of the matter and therefore, is not fatal to any proceedings/suits and such proceedings ought not to be dismissed on such ground in respect of that he further referred to the case of *Zarif Ahmad vs. Mohd. Farooq*⁴ and the case of *Pjiraddi Naskar vs. Ambika Churn Mitter*⁵ wherein the Hon'ble High Court at Calcutta held that in a suit for rent, if

²Reported in 2000(1) MPLJ 79 .

³Reported in (2015) 1 Gauhati LR 644.

⁴Reported in AIR 2015 SC 1236.

⁵Reported in 5 CWN 121.

sufficient description is given to identify the property, then the description by way of metes and bounds and/or boundaries are not absolutely necessary.

11. In respect of ground that the subject property being 48A, Taratala Road is the subject matter of scheme proceedings pending before the NCLT, Kolkata arising out of a scheme proceedings filed before the Hon'ble High Court at Calcutta, the defendants/petitioners submitted that the suit property is owned by the defendant no. 1 received by it under a scheme of Demerger/Arrangement approved under the provisions of the Companies Act duly approved by the Hon'ble High Court at Calcutta. That the present suit questions the defendant no.1's title and therefore, the suit is barred under Section 430 of the Companies Act, 2013 and Section 9 of CPC.

12. Ld. Counsel for the defendants submitted that the title of the defendant to the suit premises stems from an order dated 10th August, 2011 approving a scheme of Arrangement under the Companies Act. C.P. No. 42 (IB) of 2020 has been filed before the National Company Law Tribunal, Kolkata for enforcement of the Scheme of Arrangement under Section 231(1A) of the Companies Act, 2013. Enforcement of Scheme is by the NCLT, Kolkata. Under Section 430 of the Companies Act, 2013, the NCLT has exclusive jurisdiction to decide the issue of enforcement of Scheme and the issue as to whether the title of a property has come to the defendant. That jurisdiction of the Civil Court is barred in view of Section 430 of the Companies Act, 2013 in respect of all matters which can be decided by NCLT, Kolkata is evident from a judgment reported at MANU/WB/2568/2019. The plaintiff and its sister concerns are opposing such application pending before the NCLT, Kolkata. This would be evident from the reply filed by the plaintiff's sister concern. Ld. Counsel referred to the paragraph no. 6 of the plaint and submitted that Rajiv Jindal and Arjun Jindal are in control in the plaintiff. Paragraph no. 13 of the reply in NCLT would show that the plaintiff's sister concern, Machino Plastics Limited is also controlled by Rajiv Jindal and Arjun Jindal. Therefore, the plaintiff and/or its sister concern are attempting to prevent the defendant to obtain implementation of the Scheme which would give it possession of the suit premises. Therefore, the question raised in the plaint cannot be decided by a Civil Court and can only be decided by NCLT.

13. *Per contra*, the plaintiff/respondent stated and submitted that there is absolutely no nexus between both the proceedings whatsoever i.e. the instant suits and C.P. No. 42(IB) of 2020 pending before NCLT, Kolkata. In fact, both

proceedings are mutually exclusive of each other and do not relate and/or concern each other in any manner whatsoever. Significantly, both the suits have been filed by Machino Techno Sales Private Limited against Machino Transport Private Limited. The proceedings pending before NCLT, Kolkata which was initiated by the respondents is against Machino Finance Private Limited.

14. Ld. Counsel for the plaintiff/respondent submitted that the bar under Section 430 of the Companies Act, 2013 shall not apply to the instant proceedings as the present suits have been filed seeking reliefs as regards the title of the subject property along with the recovery of lease rentals illegally earned by the defendants from the said property. However, the proceedings pending before NCLT, Kolkata have been filed under Section 230-232 of the Companies Act, 2013. He continued that upon a bare perusal of the said provisions being Section 230-232 of the Companies Act, 2012, it will be manifest that the Hon'ble NCLT neither have the power to decide the title in respect of the said premises nor has the power to direct for recovery of lease rentals. In this regard, it is also pertinent to note here that in a case where the title of the property is in dispute, NCLT is not empowered to decide such issues. In support of his contention he referred to the case of the *Shashi Prakash Khemka vs. NEPC Mycon*⁶.

15. In respect of the ground no. 3 defendants/petitioners stated that the instant plaint does not disclose any cause of action since plaintiff has no right in the suit property.

16. Referred to the decision of the Hon'ble Supreme Court of India in the case of *Dahiben vs. Arvindbhai Kalyani Bhanusali (Gajra) Dead, through legal representatives and Ors*⁷. Ld. Counsel for the defendants/petitioners submitted that in the above referred the Hon'ble Apex Court held that the annexure to the plaint are required to be considered as a part of the plaint, for the purpose of an Order VII rule 11 application. In the plaint, the plaintiff has annexed two deeds showing ownership of the plaintiff in respect of the suit property. The said deeds are Annexure B to the plaint.

17. There is no statement in the plaint that 48A, Taratala Road, Kolkata 700 066 is situated in any of the above land parcels. Such statement is not contained since the same is not correct. Other two deeds have not been disclosed. The

⁶Reported in 2019 SCC Online SC 223.

⁷Reported in (2020) 7 SCC 366.

plaintiff has not denied the statements contained in paragraph no. 18 of the application under Order VII Rule 11 in paragraph no. 10 of the written objection filed by the plaintiff. Under the Commercial Courts Act, 2015, it is a requirement as to disclose all documents at the inception.

18. On the other hand, Ld. Counsel appearing for the plaintiff/respondent stated and submitted that the it is well settled principle, the while adjudicating an application under Order VII Rule 11 of CPC, the statements made in the plaint are only germane and no other pleadings can be looked into including the written statement. A suit can be dismissed under Order VII Rule 11 only in the occasion when the plaint appears to be barred from the averments made in the plaint. However, upon a bare perusal of the plaint filed in the suit, it will be evident that the suit does not appear to be barred from the averments made in the plaint and on this score along the application made under Order VII Rule 11 should be dismissed *in limine*. As regard, Ld. Counsel relied on the case of *Saktibhog Food Industries Limited vs. Central Bank of India & Anr⁸*.

19. As per the proposition of the Hon'ble Supreme Court of India laid down in various decisions it is clarified that the Court, while dealing with such an application seeking rejection of a plaint, ought to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. In this regard, it is also clarified that while making such a determination, Courts will have to disregard the pleas taken by the Defendant(s) in the Written Statement and application for rejection of the plaint on merit. Hence, the Hon'ble Apex Court has clarified that while determining any application filed under Order VII Rule 11 of CPC, the Courts should restrict itself to the plaint and should not go into the delineated facts as provided under the Written Statement or even the application filed under Order VII Rule 11. In the cases of *Liverpool and London S.P. and I Association Ltd. vs. M.V. Sea Success*, which, inter alia, provides that whether the plaint discloses a cause of action or not is essentially a question of fact, however, whether it does or does not must be found from the reading of the plaint itself during which the averments made in the plaint in their entirety must be held to be correct. In other words, the plaint must be construed as it stands, without addition or subtraction of words. Therefore, it is very clear that when a Court goes to adjudicate an Order VII Rule 11 application, the Plaint annexed with the documents will be the sacrosanct.

⁸[Reported in 2020 SCC Online SC 482](#)

20. Upon perusal of the present application as well as hearing of the parties to this present proceeding, it is conspicuous to this Court that Defendant filed this present interlocutory application mainly resorting to clause (a) and clause (d) of the Order VII Rule 11 and all other residual clauses as enumerated in the said Order are otiose in term of the factual aspects of the instant application.

21. It is reiterated that it is well settled golden proposition in law that at the time of the considering an application for rejection of plaint, Court has to confine itself only to averments made therein. Whether the Plaintiff will succeed or not, is a matter of trial and not the subject matter of enquiry under Order VII Rule 11.

22. So, from the discussions made in the foregoing paragraphs, this Court is of the view that the manner in which the case has been made out and upon meaningful reading of the pleadings made in the plaint, the issues relating to cause of action etc. assume character of mixed question of fact and law, therefore, I have no other option but to reject the application under Order VII Rule 11 read with Section 151 of the CPC filed by the defendants being I.A. No. 03 of 2021 on contest without any order as to cost. The I.A.No.03 of 2021 is thus, accordingly disposed of.

I.A. No. 05 of 2023

1. The instant application has been filed by the plaintiff under Order VI Rule 17 of CPC praying for amendment of the schedule as delineated in the plaint of the instant case.

2. The plaintiff has stated in this application that the fact of the matter is that the subject property is clearly identifiable and the respondent/defendants are well aware of the whereabouts, location and the description of the subject immovable property and the same will also appear from the "Schedule" annexed to an illegal Agreement of Lease dated September 18, 2017 entered into by and between the defendant no. 1 and a third party. Pertinently, under the said Agreement of Lease dated September 18, 2017, the subject immovable property was illegally leased to the third party by the defendant despite being aware of the fact that the property belonged to the plaintiff. However, since the Schedule annexed to the plaint is not in *pari materia* to the Schedule annexed to the said illegal Agreement of Lease dated September 18, 2017 describing the subject property, the plaintiff is necessitated to file the present application seeking to amend the Schedule annexed to the plaint describing the property to

clarify the confusion sought to be created by the respondent no.1/defendant no.

1. As such plaintiff/petitioner has prayed for necessary amendment in the plaint as prayed for in the instant application.

3. On contrary to above, defendants/respondents contended that the plaint deserves to be rejected since even after the amendment the schedule of the property annexed to the alleged illegal agreement of lease deed dated September 18, 2017 does not in any manner relate to the alleged property of the plaintiff as mentioned in the sale deeds filed by the plaintiff to claim ownership. The amendment sought for is not necessary for the purpose of determining the real questions in controversy between the parties. The plaintiff/petitioner by way of amendment application is trying to introduce a new case in the present suit. The same is not permissible and therefore, should not be allowed. The amendments, if allowed shall materially result in change of the nature and character of the sit as the plaintiff/petitioner seeks to amend the Schedule of the plaint. The scope of amendment contemplated under Order 6 Rule 17 does not permit such changes by way of amendment. The present application seeks to do so therefore is liable to be rejected. The defendants/respondents having filing an application under Order VII Rule 11 is now entitled to an accrued right to have the plaint dismissed on the grounds already available on record. The amendments if allowed to be carried out shall take away such accrued right of the defendant, which is not permissible. The plaintiff cannot be permitted to rectify its mistakes at this stage after having received the copies of the application under Order VII Rule 11 filed by the defendant, by taking recourse to Order VI Rule 17 of the CPC. The scheme of the said provisions does not permit the same. As such, defendants/respondents have prayed for dismissal the instant application.

4. So, after going through the proposed amendment of the schedule of the plaint, it appears to the Court, that the proposed amendment will not change the nature and character of the suit and which is necessary for the purpose of determining the real questions in controversy between the parties.

5. Accordingly, amend the schedule of the plaint in terms of the prayer of the application being no. I.A.05/2023 under Order 6 Rule 17 of the CPC, 1908 filed by the plaintiff / petitioner and which is thus allowed on contest without any order as to costs. I.A. No. 05/2023 is thus disposed of.

D.A. to do the needful.

Plaintiff is also directed to file the amended copy of the plaint on the date fixed after supplying the copy of the same to the other side.

Fix the matter on 23.07.2024 at 11:00 a.m. for further order.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram.