Sejal Glass Ltd. vs Navilan Merchants Pvt. Ltd. And Ors on 21 August, 2017

Equivalent citations: AIR 2017 SUPREME COURT 4477, 2018 (11) SCC 780, 2018 (1) ADR 480, AIR 2018 SC (CIVIL) 415, (2018) 1 ALLMR 961 (SC), (2017) 4 CAL HN 1, (2017) 4 RECCIVR 416, (2017) 11 SCALE 238, (2017) 4 ICC 891, (2017) 178 ALLINDCAS 31 (SC), (2017) 2 CLR 884 (SC), (2018) 1 MAD LW 447, (2018) 1 JCR 83 (SC), (2018) 1 ALL RENTCAS 209, (2017) 2 ORISSA LR 655, (2018) 138 REVDEC 177, (2017) 6 ANDHLD 137, (2017) 125 ALL LR 471, (2017) 6 BOM CR 520

Author: R.F. Nariman

Bench: Sanjay Kishan Kaul, Rohinton Fali Nariman

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IN THE SUPREME COURT OF INDIA

CIIVL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10802 OF 2017
(Arising out of S.L.P.(C) No. 5862 of 2017)

SEJAL GLASS LTD.

VERSUS

NAVILAN MERCHANTS PVT. LTD. Respondent(s)

WITH

CIVIL APPEAL NO. 10803 OF 2017
(Arising out of S.L.P.(C) No. 21930 of 2017)
@ S.L.P.(C)...CC No. 7790/2017

J U D G M E N T

R.F. NARIMAN, J.

1) Delay condoned.

2) Leave granted.

3) The respondent filed a Civil Suit being CS (Comm) No. 330

of 2016 in April, 2016 praying for the following reliefs:

> "a) Pass a Money Decree in a sum of Rs.1,44,01,365/- with further interest both future and pendente lite @ 18% p.a. in favour of the Plaintiff & against the defendants, jointly & severally, till its complete realization along with cost of the present proceedings;
>
> b) Direct the Defendants to furnish TDS Certificates for the deduction made by them or pay further amounts towards non-payment of TDS from 31/03/14 which they were liable to pay to the concerned authority along with further interest & penalty towards non-payment of TDS"
>
> 4) An application dated 08.07.2016 was filed by the Defendant(s) under Order VII Rule 11 stating that the plaint disclosed no cause of action. By the impugned judgment dated R.NATARAJAN Date: 2017.08.25 16:05:54 IST Reason:
>
> 07.09.2016, it has been held that the plaint is to be bifurcated - it discloses no cause of action against the Directors i.e. Defendant Nos. 2 to 4 but the suit is to continue against the Defendant No.1-Company. It has further been held that the defendant, in any case, is barred from filing a written statement in the suit as he has taken inordinate time to do so.

5) In our view, the impugned judgment is wrong on principle. Order VII Rule 11 of the Code of Civil Procedure, 1908 which reads as follows:

> "11. Rejection of plaint.- The plaint shall be rejected in the following cases:-
>
> (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 to comply with the provisions of rule 9:
>
> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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." What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole.

It is only where the plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a suit from proceeding.

6) It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In Maqsud Ahmad v. Mathra Datt & Co., A.I.R. 1936 Lahore 1021 at 1022, the High Court held that a note recorded by the trial Court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms:-

"There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial Court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

7) Similarly, in Bansi Lal v. Som Parkash, A.I.R. 1952 Punjab 38 at 39, the High Court held:-

"But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr. Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has relied on a statement of the law given in Mulla's Civil Procedure Code at page 612 where it is stated: "This rule (Order 7, Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on 'Raghubans Puri v. Jyotis Swarupa', 29 All 325, 'Appa Rao v. Secretary of State', 54 Mad 416, and 'Maqsud Ahmad v. Mathra Datt & Co.', AIR 1936 Lah 1021. In reply to this argument Mr. Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part. I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

8) In (Sree Rajah) Venkata Rangiah Appa Rao Bahadur and another v. Secretary of State and others, A.I.R. 1931 Madras 175 at 176, the Madras High Court held:-

"Referring to S. 54 of the old Civil Procedure Code, the learned Judge states that that section only provides for the rejection of a plaint in the event of any matters specified in that section not being complied with and it does not justify the rejection of any particular portion of a plaint. S. 54 now corresponds to O. 7, R. 11, Civil Procedure Code. The plain meaning of that rule seems to be that if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint.

Non-compliance with the requisites of S. 80, Civil Procedure Code, was taken to be a ground covered by Cl. (d) of R. 11, above referred to. Even if it should be taken that that clause does not strictly apply to the present case, I must hold that the suits are liable to dismissal on account of non-compliance with S. 80, Civil Procedure Code." It was further found that if the suit was dismissed for want of notice against the Government under Section 80 CPC, it cannot be allowed to proceed against the other defendants for the reason that the Government's right to resume inam lands, on the facts of that case, stands unaffected, and that being so, the plaintiff's claim to recover possession of such lands from other defendants would also fall to the ground for the simple reason that they have no right then to resume those inams. It was, therefore, held on the peculiar facts of that case that for the reasons given the suit would fail as a whole.

9) However, in Kalepu Pala Subrahmanyan v. Tiguti Venkata Peddiraju and others, A.I.R. 1971 A.P. 313, a single Judge referred to AIR 1931 Madras 175, and then held that the suit was barred by time in respect of only certain items of property and not in respect of others. Despite this, it was held that since the plaint as a whole should have been rejected, the baby was thrown out with the bathwater, and the entirety of the plaint and not merely the properties against which the suit could not proceed (as it was barred by limitation), was rejected.

10) 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.

11) If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order VI Rule 16 of the CPC would apply. Order VI Rule 16 states as follows:-

"16. Striking out pleadings.- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

a) which may be unnecessary, scandalous, frivolous or vexatious, or

b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

c) which is otherwise an abuse of the process of the Court." It is clear that Order VI Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the Court.

12) In contrast to the above provisions, which apply on a demurrer, the provisions of Order XIV Rule 2, read as follows;

"2. Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

13) The Court is vested with a discretion under this order to deal with an issue of law, which it may try as a preliminary issue if it relates to the jurisdiction of the Court, or is a bar to the suit created for the time being in force. Obviously, this provision would apply after issues are struck i.e. after a written statement is filed. This provision again cannot come to the rescue of learned counsel for the respondent.

14) This being the case, we set aside the impugned judgment and grant the defendants in the suit a period of eight weeks from today within which to file their written statement after which the suit will proceed to be tried.

15) The appeals are disposed of accordingly.

16) The question of law, insofar as the Commercial Courts Act is concerned, has not been touched by us and is consequently left open.

..... J.

(ROHINTON FALI NARIMAN) ..... J.

(SANJAY KISHAN KAUL) New Delhi;

August 21, 2017.