Popat And Kotecha Property vs State Bank Of India Staff Association on 29 August, 2005

Equivalent citations: AIRONLINE 2005 SC 1032

Author: Arijit Pasayat

Bench: Arijit Pasayat, H.K. Sema

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           CASE NO.:
Appeal (civil)  3460 of 2000

PETITIONER:
Popat and Kotecha Property

RESPONDENT:
State Bank of India Staff Association

DATE OF JUDGMENT: 29/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Calcutta High Court holding that the plaint filed by the appellant was to be rejected in terms of Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (in short the 'CPC') as the suit was barred by limitation. The order passed by learned Single Judge holding that said provision was not applicable to the facts of the case was set aside.

Factual position in a nutshell is as follows:

> Appellant and respondent entered into an agreement on 19th January, 1983 whereby the appellant agreed to build and develop the property owned by the respondent-Association. A detailed agreement was accordingly executed on 19th January, 1983 which, inter alia, provided for regulating relationship between the parties. Para 13 of the agreement stipulated that after construction of the entire building and issuance of final completion certificate by two Chartered Engineers the appellant shall by a notice to the respondent- Association call upon it to execute a registered lease deed in its favour or in favour of its nominee whereby a lease of the 2nd floor, 3rd floor, 4th floor, 5th floor and the roof (collectively described as the demised premises) was to be granted. Several stipulations were provided in detail. It

is not in dispute that the building was completed in the year 1984. Appellant claimed to have written a letter dated 4.11.1984 calling upon the respondent to execute the lease deed in its favour. Admittedly no lease deed has been executed. The suit was filed in July, 1990, inter alia, with the following prayers:

"(a) Declaration that the plaintiff alone is entitled to let out the ground floor, 2nd, 3rd, 4th, 5th floor and the roof of the said premises shortly referred to have as the 'Builders Block' and realize all rents, issues and profits therefrom without any interference by the defendant.

(b) Perpetual injunction restraining the defendant from executing any lease or other documents in favour of persons in occupation of any portion of the builders block referred to in prayers (a) or in relation to any part or portion of the said block in consideration of any sum or from realizing any rent issues or profit therefrom incumbent or otherwise deal with and exercise any control or dominance over the same;

(c) Decree for Rs.18,84,500/- (Rupees Eighteen lacs eighty four thousand five hundred) only as pleaded in paragraphs 18 and 25 of the plaint.

(d) Alternatively, an account of what is due and payable to the plaintiff by the defendant in respect of all dealings and transactions by the defendant with the person or persons in occupation of the builders block of the said premises and a decree for such sum as may be found due and payable after taking such account;

(e) All further proper accounts enquiries and directions;

(f) Decree for specific performance of the Development Agreement dated 19th January, 1983 be granted against the defendant in terms of Clause 16 of the said Agreement requiring the defendant to execute Deed of Lease for a period of 51 years on terms and conditions contained in the said Clause;

(g) Mandatory injunction directing the defendant to execute and register a Deed of Lease, in favour of the plaintiff and/or its nominee or nominees in terms of Clause 18 of the Development Agreement dated 19th January, 1983 in respect of the Builders Block, being the 2nd, 3rd, 4th, 5th floor and roof as referred to above;

(h) In the event of the defendant failing to execute, register and deliver Deed of Lease, the Registrar, Original Side of this Hon'ble Court be directed to settle execute and register necessary Deed of Lease in respect of the Builders Block as referred to above for and on behalf of the defendant.

(i) Decree for Rs.80 lacs as damages as mentioned in paragraph 12 above in addition to a decree for specific performance;

(j) Alternatively, an enquiry, into loss and damage suffered by the plaintiff and a decree for such sum as may be found due and payable upon such enquiry;

(k) In the event decree for specific performance as prayed for cannot be granted, a decree for damages in terms of specific performance be granted against the defendant at such rate or rates and on such basis as this Hon'ble Court may deem fit and proper;

(l) Costs;

(m) Further or other reliefs."

An application was filed by the respondent under Order VII Rule 11 of CPC praying for rejection of the plaint on the ground that the suit as is apparent from the statement contained in the plaint itself was barred by limitation in the sense that the suit was filed beyond the period prescribed in the Indian Limitation Act, 1963 (in short 'Limitation Act').

Learned Single Judge dismissed the application holding that the expression "barred by any law" as occurring in the provision did not include the operation of the Limitation Act. The Division Bench was of the view that the claims made in the plaint revolve round the nucleus i.e. focal point of the execution of lease deed which was to be done sometimes in 1985 and as the suit was filed in 1999, it was clearly barred by limitation.

Learned counsel for the appellant submitted that the approach of the Division Bench is clearly erroneous. The High Court proceeded on the basis as if the only claim related to execution of the lease deed. In fact, there were several other reliefs like claim for damages, unauthorized collection of amounts in respect of the building which admittedly were to be in possession of the present appellant with full liberty to let out the premises. Clause 12 of the agreement clearly stipulated that the appellant had the authority to let out the building without any objection and without requiring consent from the respondent-Association. The Receiver appointed by the Court on the interlocutory application filed by the applicant clearly noted that the defendant i.e. the respondent-Association had executed lease deeds on 3.4.1988, 16.7.1988 and 19.4.1999. Prayer in the plaint was to pass a decree of Rs.18,84,500/- which was the amount collected by the respondent. The suit was by no stretch of imagination filed beyond the period of limitation. By its conduct the respondent had acknowledged the claim of the plaintiff-appellant and the period of limitation in any event would run from the date of acknowledgement.

Per contra, learned counsel for the respondent submitted that though various claims were made, as rightly observed by the High Court, focal point was non-execution of lease deed. All the other claims had their matrix thereon and, therefore, the Division Bench of the High Court was right in deciding in favour of the present respondent. It was submitted that the collections made by the respondent were for the period beyond 51 years from the date of agreement in 1983 and not for any period prior to that. There was no question of the period of limitation getting extended, even if there is an acknowledgment beyond the prescribed period of limitation.

The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. (Also See France B. Martins v. Mafalda Maria (1996 (6) SCC 627).

Bar of limitation does not obstruct the execution. It bars the remedy. (See V. Subba Rao and Ors. v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P. and Ors. (1996 (7) SCC 626.) Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See N. Balakrishanan v. M. Krishna Murthy (1998 (7) SCC 123).

Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

Order VII Rule 11 of the Code reads as follows:

> Order VII Rule 11: Rejection of plaint. The plaint shall be rejected in the following cases :-
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> (a) where it does not disclose a cause of action;
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> (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;
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> (c) where the relief claims 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."

In the present case the respondent has relied upon clause (d) of Rule 11.

Before dealing with the factual scenario, the spectrum of Order VII Rule 11 in the legal ambit needs to be noted.

In Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003 (1) SCC 557) it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors. (1998 (2) SCC 70) it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See T. Arivandandam v. T.V. Satyapal and Anr. (1977 (4) SCC 467) It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill (1982 (3) SCC 487), only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

In Raptakos Brett & Co. Ltd. v. Ganesh Property (1998 (7) SCC 184) it was observed that the averments in the plaint as a whole have to be seen to find out whether clause

(d) of Rule 11 of Order VII was applicable.

There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair- splitting technicalities.

Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.

Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. (1936) 1 KB 697 in the following passage:

> Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.
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> The above position was highlighted in Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004 (3) SCC 137).

> When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo's case (supra), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.

We do not intend to go into various claims in detail as disputed questions in relation to the issue of limitation are involved.

The appeal is accordingly allowed with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the case which shall be gone into in accordance with law by the Trial Court.