

Vithalbhai Pvt. Ltd vs Union Bank Of India on 11 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1891, 2005 AIR SCW 1509, (2005) 2 CTC 582 (SC), (2005) 3 ALLMR 649 (SC), (2005) 1 CLR 502 (SC), (2005) 28 ALLINDCAS 15 (SC), 2005 (3) SLT 72, 2005 (3) SCALE 132, 2005 (4) SCC 315, 2005 (2) ALL CJ 1363, 2005 SCFBRC 233, 2005 (3) ALL MR 649, 2005 (1) CLR 502, 2005 (2) CTC 582, 2005 (4) SRJ 256, (2005) 3 JT 278 (SC), 2005 ALL CJ 2 1363, 2005 (2) BLJR 937, (2005) ILR (KANT) 1531, (2005) 100 CUT LT 297, (2005) 5 SCJ 28, (2005) 2 RECCIVR 124, (2005) 3 ICC 640, (2005) 3 SCALE 132, (2005) 59 ALL LR 276, (2005) 2 ALL WC 1023, (2005) 2 CAL HN 137, (2005) 1 CURCC 244, (2005) 1 RENCRC 357, (2005) 1 RENTLR 641, (2005) 1 ALL RENTCAS 887, (2005) 1 RENCJ 71, (2005) 1 WLC(SC)CVL 494, (2005) 2 KER LT 491, (2005) 2 LANDLR 19, (2006) 1 MAD LW 1, (2005) 3 ANDHLD 6, (2005) 2 SUPREME 518, (2005) 2 CAL LJ 129, (2005) 3 CIVLJ 248

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Bench: R.C. Lahoti, G.P. Mathur

CASE NO.:
Appeal (civil) 2390 of 2002

PETITIONER:
Vithalbhai Pvt. Ltd.

RESPONDENT:
Union Bank of India

DATE OF JUDGMENT: 11/03/2005

BENCH:
CJI R.C. Lahoti & G.P. Mathur

JUDGMENT:

J U D G M E N T R.C. Lahoti, CJI In respect of a property situated in the metropolitan city of Calcutta, a lease of immovable property for a fixed term commencing 1.4.1964 and expiring on 24.6.1984 evidenced by a registered deed of lease dated 17.7.1964, came into existence. The lessee entered into possession of the leased premises on 1.4.1964. On 26.9.1983, the lessor served a notice on the lessee informing the lessee that the tenancy was to expire on 24.6.1984 and, therefore, on that day the lessee must deliver vacant possession of the demised premises to the lessor. On 8.11.1983, the lessee sent a reply taking a firm stand that he would not vacate the demised premises in terms of the lease deed and the request contained in the communication dated 8.11.1983. The

lessee also disputed the entitlement of the lessor to demand possession from the lessee on a plea that the title of the lessor to claim possession had itself come to an end on account of eviction by a paramount title- holder. On 16.4.1984, the present suit was filed by the lessor against the lessee seeking the following reliefs:-

"a) a declaration that the plaintiff is entitled to vacant and peaceful possession of the said premises to be delivered by the defendant to the plaintiff on the expiry of the term of the said lease dated July 17, 1964, i.e. on the expiry of June 24, 1984.

b) perpetual injunction restraining the defendant, its agents and servants from subletting, assigning or parting with possession of the said premises or any part thereof during the said term of the said lease and from giving possession of the said premises or any part thereof to any person other than the plaintiff on the expiry of the said lease.

c) a decree for vacant possession of the said premises on the expiry of the term of the said lease as aforesaid.

d) a decree for Rs.30,000/- for damages or alternatively, an enquiry into damages and a decree for such as may be found due to the plaintiff.

e) Receiver;

f) Costs;

g) further and other reliefs."

The suit was filed twelve weeks before the date on which the lease was to expire by efflux of time within the meaning of clause (a) of Section 111 of the Transfer of Property Act, 1882. The written statement was filed on 24.8.1994. One of the pleas taken in the written statement was that the suit was premature and hence was not maintainable.

In January 1985, the lessor-plaintiff moved an application for amendment of the plaint which was allowed by the order dated 27.2.1985. The plaintiff introduced in the plaint further averments in support of his entitlement to possession over the leased premises. To the reliefs which he had sought for earlier, the following relief was further added:

"Mesne profits at Rs.595/- per diem or at such other rate as to this Hon'ble Court may seem fit and proper from 25th June, 1984, until vacant and peaceful possession of the said demised premises is given to the plaintiff by the defendant;"

The defendant filed additional written statement.

By judgment dated 12.2.1992 the High Court (Original Side) decreed the suit holding the plaintiff entitled to decree of eviction with a preliminary decree directing an enquiry to ascertain the mesne profits. The plea as to non-maintainability of suit on account of its being premature was decided against the defendant by the learned Single Judge of the High Court placing reliance on (Mylavarapu) Rangayya Naidu v. Basana Simon and Ors. (AIR 1926 Madras

594). In the opinion of the learned Single Judge, no prejudice was caused to the defendant on account of the suit having been filed a little before the expiry of lease by efflux of time inasmuch as even if theoretically the suit could have been disposed of before 24th June, 1984 it would still have been open for the Court to pass a decree of eviction and make the decree executable only after 24th June, 1984. The defendant preferred an intra-court appeal. The Division Bench has reversed the judgment of the learned Single Judge and directed the suit to be dismissed holding it premature, as it was based on a cause of action which was not ripe on the date of the institution of the suit. Feeling aggrieved, the plaintiff has filed this appeal by special leave.

The sole question arising for decision in this appeal is whether the suit was premature on the date of its institution and hence no relief could have been allowed to the plaintiff in such a suit. It was conceded at the Bar that on the answer to this question would depend whether the suit for eviction would be decreed or not. To be entitled to file a civil suit the plaintiff must be entitled to a relief and the suit must be of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred (See Section 9 of the Code of Civil Procedure, 1908). Section 3 of the Limitation Act, 1963 provides that a suit filed after the prescribed period of limitation, shall be dismissed without regard to the fact whether limitation has been set up as a defence or not. However, there is no such provision (and none brought to our notice at the Bar in spite of a specific query in that regard having been raised) which mandates a premature suit being dismissed for this reason. The only relevant provision is the one contained in Rule 11 of Order 7 of the CPC which provides for a plaint being rejected where it does not disclose a cause of action. Though the plaint is not rejected, yet a suit may be dismissed if the Court on trial holds that the plaintiff was not entitled on the date of the institution of the suit to the relief sought for in the plaint.

The learned counsel for the plaintiff-appellant submitted that in the present case the suit cannot be said to have been filed as premature on the date of its institution. He submits that in the response dated 8.11.1983, the defendant-respondent had clearly disputed the plaintiff's entitlement to evict the defendant-respondent on 25.6.1984, the date of expiry of the lease and therefore a cloud was cast on the title of the plaintiff. The plaintiff was therefore fully justified in bringing the suit after the receipt of the reply dated 8.11.1983. In the alternative, it was submitted that assuming that the suit was premature on the date of its institution, it became ripe during its pendency and was certainly so on the date on which the written statement was filed by the defendant, and that the Court has the power to take notice of such event and, therefore, to decree the suit.

In our opinion, a suit based on a plaint which discloses a cause of action is not necessarily to be dismissed on trial solely because it was premature on the date of its institution if by the time the written statement came to be filed or by the time the Court is called upon to pass a decree, the plaintiff is found entitled to the relief prayed for in the plaint. Though there is no direct decision

available on the point but a few cases showing the trend of judicial opinion may be noticed. Under Section 80 of the CPC no suit shall be instituted against the Government or a public officer until the expiration of two months next after service of notice in writing in the manner set out in the provision and if filed before the expiry of said period, the suit is not maintainable because there is clearly a public purpose underlying the provision. 'The object of the Section is the advancement of justice and securing of public good by avoidance of unnecessary litigation.' (See : Bihari Chowdhary and Another v. State of Bihar and Ors. (1984) 2 SCC 627). In (Vaddadi) Butchiraju and Ors. v. Doddi Seetharamayya and Ors. (AIR 1926 Madras 377) the suit was for a sum of money which had not become payable on the date of the suit but became payable since. Visvanatha Sastri, J. (as His Lordship then was) held that the Court could pass a decree for the recovery of money. Reliance was placed on a Full Bench decision in A.T. Raghava Chariar v. O.M. Srinivasa Raghava Chariar (1917) ILR 40 Mad. 308 and a few other cases. Here, in all fairness, it may be mentioned that in (Mylavarapu) Rangayya Naidu v. Basana Simon and Ors. (AIR 1926 Madras 594), Spencer, J. has held that if a suit is premature at the date of institution, though not at the date of decision, a decree cannot be granted and the only course in such cases is to dismiss the suit with liberty to bring a fresh suit upon a proper cause of action. It is pertinent to note that Butchiraju and Ors.'s case was decided on 5.10.1925 while Rangayya Naidu's case was decided on 7.10.1925 but the former decision though of a prior date was not brought to the notice of the Court deciding the latter case. Tarak Chandra Das and Anr. v. Anukul Chandra Mukherjee (AIR 1946 Calcutta 118) is a Division Bench decision of Calcutta High Court wherein the suit was declaratory in nature filed under Section 42 of the Specific Relief Act, 1877. The defendant sought the dismissal of the suit on the ground that the right asserted by the plaintiff was not an existing right but a future and contingent one and whether it would at all come into being or not was dependant upon an uncertain event which might or might not happen. Justice B.K. Mukherjea (as His Lordship then was) speaking for the Division Bench held that though the right must be an existing one, it need not necessarily be a right which is vested already. A person having even a contingent right in a property may sue for a declaration. The Court in the exercise of its discretion may refuse to make such declaration if it considers the claim to be too remote or if the declaration given would be ineffectual and abortive. The question really is not one of jurisdiction but one of discretion to be exercised by the Court. Sankara Pillai v. Mathunni Ittiera (1958 KLT 220) the suit was for redemption of a mortgage. The mortgage became redeemable on 12.10.1957 but the suit was filed on 23.8.1952. The suit was undoubtedly premature when it was brought. The Division Bench held that the mortgage having become subsequently redeemable it would be unnecessary and unjust to drive the plaintiff to a separate suit. To mitigate hardship of this kind and to shorten litigation the Court can take notice of the subsequent event of the mortgage having become redeemable during the pendency of the suit and grant relief provided the substantive rights of the parties were not affected. The Court decreed the suit but directed the plaintiff to bear the costs incurred by the defendant.

Kathringa v. Lonappan (1969 KLT 334) was a suit for eviction filed under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The suit could be filed only one year after the date of transfer inter vivos in favour of the plaintiff. The plaintiff acquired title by purchase on 1st December, 1962 and the proceedings for eviction were instituted on 11.6.1963. However, there was no objection taken in the written statement to the maintainability of the suit. When the case came up for hearing on 10th February, 1965 by which date more than two years and three months had

elapsed, the objection was urged. The learned single Judge held that at that stage it was a matter of discretion vesting in the Court and the Court could depart from the general rule that the rights of parties must be determined as on the date of the institution of the action. However, the Single Bench decision in *Kathringa v. Lonappan* (1969 KLT 334) was cited before a Division Bench of Kerala High Court in *Hameed v. Ittoop* (1970 KLT 501) and was overruled. The Division Bench formed the opinion that the statutory bar enacted in Section 11(3) of Kerala Buildings Act pertains to jurisdiction of the Court. The Court is deprived of power to entertain the petition for eviction by the transferee-landlord filed before the expiry of one year of the date of assignment in his favour. The Division Bench relied on the decision of this Court in *V.N. Sarin v. Ajit Kumar Poplai* (AIR 1966 SC 432) wherein interpreting a *pari materia* provision contained in Delhi Rent Control Act, this Court held that the underlying object behind such a provision is to serve a public purpose and is based on public policy to prevent the mischief of unscrupulous landlords entering into transaction of transferring title to property with a view to enable the purchaser to evict the tenant and thereby defeat the legislative intention of protecting tenants from unmerited evictions.

A Full Bench of Kerala High Court in *Themmalapuram Bus Transport, Palghat v. Regional Transport Authority, Palghat & Ors.* (1967 KLT 122) reiterated the well-settled principle that the general rule is that the relief claimed in the suit must be confined to matters existing at the date when the suit was instituted. But that is a rule of discretion and can be departed from in certain circumstances except where such departure would cause manifest advantage or disadvantage to one party.

In *Subbaraya Chetty v. Nachiar Ammal* (1918) VII LW 403, money under the mortgage bond did not become payable until a few days after the institution of the suit for its recovery. In *Zadba Sadasheo Balpande v. Maharashtra Revenue Tribunal and ors.* 1964 Mh LJ 559, application for possession was filed 8 days before the date of termination of lease. In both the cases, the respective Division Benches have allowed relief to the plaintiff on the ground that driving the plaintiff to institute another suit would be hardship and no prejudice was caused to the defendant.

In our opinion, the correct position of law flows from the above-noted decisions.

In *Samar Singh v. Kedar Nath and Ors.* 1987 Supp. SCC 663, this Court while dealing with an election petition has held that the power to summarily reject conferred by Order 7 Rule 11 of the Code of Civil Procedure can be exercised at the threshold of the proceedings and is also available, in the absence of any restriction statutorily placed, to be exercised at any stage of subsequent proceedings. However, the Court has also emphasized the need of raising a preliminary objection as to maintainability as early as possible though the power of the Court to consider the same at a subsequent stage is not taken away.

In *Gurdit Singh and Ors. Vs. Munsha Singh and Ors.* (1977) 1 SCC 791 it was held that the Court trying a premature suit does not suffer from inability or incapacity to entertain the suit on the grounds of lack of jurisdiction. Dealing with the 'narrower sense' and 'more comprehensive sense' in which the expression 'cause of action' is at times employed, the Court has indicated that the cause of action may suggest all those essential facts without the proof of which the plaintiff must fail in his

suit but 'right to sue' may have a different connotation, the accrual of which need not necessarily be treated as an ingredient of cause of action but would be more relevant for the purpose of determining the commencement of the period of limitation. No amount of waiver or consent can confer jurisdiction on a Court which it inherently lacks or where none exists. The filing of a suit when there is cause of action though premature does not raise a jurisdictional question. The claim may be well-merited and the Court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff should have waited a little more before entering the portals of the Court. In such a case the question is one of discretion. In spite of the suit being premature on the date of its institution the Court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. Would it serve any purpose, and do the ends of justice compel the plaintiff being thrown out and then driven to the need of filing a fresh suit are pertinent queries to be posed by the Court to itself.

Where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant. The Court may reject the plaint if it does not disclose the cause of action. It may dismiss the suit with liberty to the plaintiff to file a fresh suit on its maturity. The plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, may be irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the Court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the Court shall not necessarily dismiss the suit. The Court would examine if any prejudice has been caused to the defendant or any manifest injustice would result to the defendant if the suit is to be decreed. The Court would also examine if in the facts and circumstances of the case it is necessary to drive the plaintiff to the need of filing a fresh suit or grant a decree in the same suit inasmuch as it would not make any real difference at that stage if the suit would have to be filed again on its having matured for filing. We may now briefly sum up the correct position of law which is as follows :

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court; the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant decree or not. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to plaintiff or

disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the Court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the Court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i) When there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction, and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See : Samar Singh v. Kedar Nath and Ors. 1987 Supp. SCC 663). One more category of suits which may be added to ___ where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained. In the case at hand, the act of the plaintiff filing the suit before 25.6.1984 cannot be said to be malicious or intended to overreach the Court. The defendant's reply dated 8.11.1983 prompted the plaintiff in filing the suit inasmuch as the plaintiff reasonably thought that a cloud was already cast on his entitlement to recover the property and he should promptly approach the Court . True, the defendant could have changed his mind and thought of delivering the possession of the property to the plaintiff on or after 25.6.1984 the date whereafter only the suit could ordinarily have been filed and in that case there would have been no occasion at all for filing the suit. The defendant filed its written statement much after that date. The objection as to maintainability of the suit was taken in the written statement. If only it would have been pressed for decision and the Court would have formed that opinion at the preliminary stage then the plaintiff could have withdrawn the suit or the Court could have dismissed the suit as premature. In either case, the plaintiff would have filed a fresh suit based on the same cause of action soon after 25.6.1984. By the time the suit came to be decided on 12.2.1992, the dismissal of the suit on the ground of its being premature would have been a travesty of justice when the plaintiff was found entitled to a decree otherwise.

The learned Single Judge rightly overruled the defendant's objection and directed the suit to be decreed. The Division Bench ought not to have interfered with the judgment and decree passed by the learned Single Judge.

The appeal is allowed. The judgment and decree passed by the Division Bench is set aside and instead the judgment and decree dated 12.2.1992 passed by the learned Single Judge is restored. However, the defendant is allowed time till 30.9.2005 for vacating the suit premises subject to the filing of the usual undertaking in the High Court and clearing money part of the decree within a

period of six weeks from today. The plaintiff would not be entitled to costs in the suit. Costs incurred by the plaintiff in appeal before Division Bench and in this Court shall be borne by the defendant.