

SAYYED AYAZ ALI

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v.

PRAKASH G GOYAL & ORS.

(Civil Appeal Nos. 2401-2402 of 2021)

JULY 20, 2021

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M R SHAH, JJ.]**

*Code of Civil Procedure, 1908: s.96; Or.7 r.11 – Rejection of
plaint – Writ petition by plaintiff challenging the order of trial court
allowing the application filed under Or.7 r.11 – Maintainability of
– Held: The definition of “decree” in s.2(2) “shall be deemed to
include the rejection of a plaint” – Hence, the order of trial court
rejecting the plaint is subject to a first appeal under s.96 of the
CPC – Writ petition by plaintiff liable to be rejected on that ground
– Writ jurisdiction.*

C

*Code of Civil Procedure, 1908: Or.7 r.11 – Trial court allowed
the application filed under Or.7 r.11 – However, while doing so,
plaintiff was directed to seek proper relief and pay court fee thereon
within 15 days otherwise appropriate order would be passed –
Defendants challenged the order of trial court in so far as it
permitted the plaintiff to carry out an amendment of seeking
appropriate relief – High Court allowed the revision petition filed
by defendants on the ground that since the plaint was rejected under
Or.7 r.11, there was no occasion to direct that an amendment be
made to the plaint – Held: The proviso to Or.7 r.11 deals with a
situation where time has been fixed by the Court for correction of
valuation or for supplying of the requisite stamp paper – Under the
proviso, the time so fixed shall not be extended unless the court, for
reasons to be recorded, is satisfied that the plaintiff was prevented
by a cause of an exceptional nature from complying within the time
fixed by the court and that a refusal to extend time would cause
grave injustice to the plaintiff – The proviso evidently covers the
cases falling within the ambit of clauses (b) and (c) and has no
application to a rejection of a plaint under Or.7 r.11(d) – In the
circumstances, the High Court was justified in coming to the
conclusion that the further direction that was issued by trial judge
was not in consonance with law.*

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A **Disposing of the appeals, the Court**

HELD: 1. The definition of “decree” in Section 2(2) “shall be deemed to include the rejection of a plaint”. Hence, the order of the Trial Court rejecting the plaint is subject to a first appeal under Section 96 of the CPC. The writ petition filed by the appellant was liable to be rejected on that ground. [Para 12][670-G]

2. The High Court while exercising its revisional jurisdiction accepted the plea of the first and second defendants that the Trial Judge, having allowed the application Order 7 Rule 11(d), was not justified in granting to the appellant-plaintiff liberty to amend the plaint by seeking appropriate reliefs and paying the court fee. The proviso to Order 7 Rule 11 deals with a situation where time has been fixed by the Court for the correction of the valuation or for supplying of the requisite stamp paper. Under the proviso, the time so fixed shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by a cause of an exceptional nature from complying within the time fixed by the court and that a refusal to extend time would cause grave injustice to the plaintiff. The proviso evidently covers the cases falling within the ambit of clauses (b) and (c) and has no application to a rejection of a plaint under Order 7 Rule 11(d). In the circumstances, the High Court was justified in coming to the conclusion that the further direction that was issued by the Trial Judge was not in consonance with law. [Para 13][671-A-B, G-H; 672-A-B]

F **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2401-2402 of 2021**

From the Judgment and Order dated 14.09.2018 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Civil Revision Application No.124 of 2017 and Writ Petition No.4508 of 2018.

G **Vinay Navare, Sr. Adv., Raju Dhoble, Kishor Kam Lambat, Ms. Kashmira Lambat, M/s. Lambat and Associates, Advs. for the Appellant.**

Pankaj Kothari, Satyajit A Desai, Ms. Anagha S. Desai, Satya Ram Sharma, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. These appeals arise from a judgment of a Single Judge at the Nagpur Bench of the High Court of Judicature at Bombay.

2. The appellant is the plaintiff in a suit instituted before the Civil Judge, Senior Division at Nagpur. The first respondent filed an application at Exhibit-50 for the rejection of the plaint on the ground that it was barred under clauses (b) and (d) of Order 7 Rule 11 of the Code of Civil Procedure 1908 (“CPC”). The Fifth Joint Civil Judge, Junior Division, Nagpur allowed the application. However, while doing so, the appellant was “directed to seek proper relief and pay court fee thereon within 15 days, otherwise appropriate order will be passed”. This order of the Trial Judge, insofar as it permitted the appellant to carry out an amendment for seeking appropriate reliefs was assailed before the High Court in a Civil Revision Application No 124 of 2017 by Defendants 1A to D and Defendant No 2 (Respondent Nos 1 to 5 to these proceedings). The appellant instituted a Writ Petition¹ under Article 227 of the Constitution for challenging the order of the Trial Judge allowing the application under Order 7 Rule 11 of the CPC. The High Court decided both the civil revision application and the writ petition by a common judgment. The Single Judge held that since the plaint was rejected under Order 7 Rule 11(d) there was no occasion to direct that an amendment be made to the plaint. The civil revision was allowed on this basis. The writ petition filed by the appellant was held to be an “after thought and belated” and no relief was granted to the appellant in the writ proceedings. That is how the proceedings have reached this Court. The appellant is essentially aggrieved by the decision of the Trial Court and the High Court to allow the application under Order 7 Rule 11(d) of the CPC.

3. Since the controversies in the present case arise out of the application under Order 7 Rule 11, it would be necessary to set out in brief the contents of the plaint. Parties would be referred to on the basis of their respective positions in the suit. The plaintiff claims that he came into contact with the third defendant who is a financial broker. The third defendant is alleged to have arranged a loan of Rs 7 lacs with interest at 5 per cent month subject on the plaintiff executing an agreement and blank documents as security for the loan. Against the loan of Rs 7 lacs, the plaintiff is alleged to have executed an agreement dated 3 April 2012 in favour of the nominees of the third defendant and executed documents

¹ (WP No 4508 of 2018)

- A which were blank. Thereafter, it is alleged that the plaintiff needed an additional finance of Rs 22 lacs and the third defendant took the plaintiff to the first defendant. The first defendant is alleged to have agreed to give a loan of Rs 22 lacs on the condition that the plaintiff executed a sale deed in respect of land of Mauza: Kanholi towards security for repayment of the loan. The amount was paid over on 11 May 2012 and
- B was to carry interest of 5 per cent per month and in consideration, the plaintiff is alleged to have executed documents including a sale deed dated 11 May 2012. In the meantime, the fourth defendant is alleged to have expressed the desire to sell plot Nos 23-A, 29, 34, 35-A, 24, 25, 26, 27 and 28 admeasuring 25.009 sq. ft. out of land bearing Khasra No 82/
- C 3 Mauza: Gorewada. P.R. No 9, Tah: and District Nagpur. This property has been referred to as the suit property. The fourth defendant is alleged to have shown an agreement dated 22 March 2011 in his favour. The plaintiff is alleged to have been shown certain documents between Shoab Asad, Murtuja Khan and Shashikant Grihanirman Sahakari Sanstha. After negotiation, it is stated that the plaintiff agreed to purchase the suit
- D property at Rs 1950 per sq. ft., out of which the plaintiff agreed to pay Rs 1400 per sq. ft. to Shashikant Grihanirman Sahakari Sanstha and Rs 550 per sq. ft. to the fourth defendant. Since the plaintiff did not have funds for the purchase of the property, it is alleged that he met the first defendant through the third defendant and sought a loan for the amount.
- E The third defendant is alleged to have agreed to a loan of Rs 1.5 crores subject to the deduction of the earlier loans of Rs 7 lacs and Rs 22 lacs together with interest. According to the plaintiff, it was however a condition that the sale deed of Plot No 23A and 24 would be executed directly in the name of the first defendant and second defendant towards security for the repayment of the loan and the sale deed for Plot Nos 25 to 29, 34
- F and 34A would be executed in the joint names of the first and second defendants and the plaintiff. The plaintiff is alleged to have entered into an agreement for the purchase of the suit property on 15 June 2012. The amount alleged to have been paid for the loan was obtained by the plaintiff from the first defendant. The sale deed for plot Nos 23A and 24 was
- G executed and registered on 27 June 2012 in the names of the first and second defendants, while the sale deed for the remaining plots was executed in the joint names of the first and second defendants and the plaintiff. The plaintiff claims to have been placed in exclusive possession of the entire suit property and it is his case that the names of the first and second defendants were incorporated in the sale deed only for security
- H for the repayment of the loan.

4. The plaintiff claims to have commenced development on the land and to have purchased an adjoining plot bearing no 9A on 28 September 2012. According to the plaintiff, on 26 September 2012, the first and third defendants came to the suit property and demanded the repayment of the interest on the loan of Rs 1.5 crores. The plaintiff is alleged to have made certain payments on 8 September 2012 and to have furnished postdated cheques towards the interest for the months of November and December 2012. The plaintiff alleged that he completed the work of leveling the plots. On 24 November 2012, the third, fourth and fifth defendants are alleged to have entered the suit property along with thirty unknown persons and to have demanded the payment of Rs. 1.50 crores within two days. The police, it is alleged, did not take any action on the complaint registered by the plaintiff.

5. The first and second defendants are alleged to have conspired with Defendants 3 to 5 to commit criminal acts against the plaintiff with the help of the local police. Crime No 475 of 2012 was registered on 28 November 2012 under Sections 143, 147, 447 and 427 of the Indian Penal Code. According to the plaintiff, during the pendency of the suit, a compromise was arrived with the first and second defendants. It has been alleged that though certain amounts were paid to the first and second defendants pursuant to the compromise, they have refused to execute a sale deed in return and have recovered an amount of Rs. 50 lacs from the plaintiff under the garb of a compromise.

The reliefs which have been sought in the suit are as follows:

“1. declare that the acts of the defendants no.3 to 5 to enter into the suit property on 24-11-2012 and to beat/assault and to interfere with the peaceful possession of the plaintiff is criminal, illegal, arbitrary and without any authority.

2. Pass decree for permanent perpetual injunction against defendants, their agents servants and the person acting on their behalf, thereby restraining them from interfering with the peaceful possession of the plaintiff over the suit property and from dispossessing the plaintiff from the suit property in any manner of whatsoever nature permanently in the interest of justice.”

6. After the institution of the suit on 26 November 2012, an application was filed on behalf of the second defendant for the rejection of the plaint under clauses b and d of Rule 11 of Order 7 of the CPC.

- A The rejection was sought on the ground that the plaintiff has admitted the execution of sale deeds in favour of the first and second defendants. Despite this, no declaration of invalidity has been sought in regard to the sale deeds. The submission was that the plaintiff did not seek the cancellation of the sale deeds on the ground that they were executed only as a security for the loan transaction. Further, no declaration was
- B sought by the plaintiff to the effect that the sale deeds did not confer any right, title or interest on the defendants. As a result of this, the suit would be barred by Section 34 of the Specific Relief Act 1963.

7. The application under Order 7 Rule 11 was rejected by the Trial Judge on 1 August 2017. The Trial Judge observed that the plaintiff
- C has claimed a declaration simpliciter that the act of the defendants in entering upon the suit property on 24 November 2012 is illegal, besides which a permanent injunction has been sought to protect the possession of the plaintiff. The Trial Judge held that the plaintiff having failed to seek a declaration that the sale deeds were executed only as a security
- D for the loan transaction, the suit is not maintainable in view of the provisions of the Section 34 of the Specific Relief Act. The Trial Judge held:

- “14 ...as discussed above, the plaintiff neither sought relief of cancellation of alleged sale deeds nor for declaration that the alleged sale deeds were executed for security purpose and not its real sense. Therefore, I am of the view that present application deserves to be allowed. However, as discussed above, the plaintiff is ready to pay the requisite court fee thereon. Therefore, I give my finding point No. 1 affirmative and so far as, point No.2 is
- E concerned, I pass following order.

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ORDER

- 1] Application is allowed.
- 2] The plaintiff is directed to seek proper relief and pay court fee thereon within 15 days, otherwise, appropriate order will be
- G passed.”

8. Aggrieved by the order of the Trial Judge, granting liberty to the plaintiff–appellant to amend the plaint despite allowing the application under Order 7 Rule 11, Defendant Nos 1-a to 1-d and Defendant No 2 (Respondent Nos 2-5 and Respondent No 1 before this Court) filed a
- H civil revision application before the High Court. On 11 September 2017

and 23 July 2018, the appellant instituted a writ petition challenging the order of the Trial Judge allowing the application (Exhibit 50) of Defendant No 2 under Order 7 Rule 11. The High Court by its judgment and order dated 14 September 2018 held that:

- (i) On a reading of the plaint, it is clear that the sale deeds were executed in the names of the first and second defendants with regard to plot Nos 23A and 24; B
- (ii) Sale deeds were executed in respect of the plot Nos 25 to 29, 34 and 34A in the joint names of the plaintiffs together with the first and second defendants;
- (iii) According to the plaintiff, these sale deeds in the name of the first and second defendants were a security for the repayment of the loan; C
- (iv) It was necessary for the plaintiff to seek a declaration that the sale deeds were executed merely as a security for the repayment of the loan and a failure to seek such a declaration would come within the purview of the proviso to Section 34 of the Specific Relief Act 1963; D
- (v) The Trial Court having allowed the application under Order 7 Rule 11(d) of the CPC committed an error in granting time to the plaintiff to amend the plaint to seek proper relief and pay court fees. Where the rejection of the plaint takes place under Order 7 Rule 11(d), there would be no question of granting time to the plaintiff to rectify the defects in the plaint. Where the suit appears from the statements in the plaint to be barred by any law, the defects are not curable; and F
- (vi) The challenge by the plaintiff to the order rejecting the plaint under Order 7 Rule 11(d) is without substance. The order on Exhibit-50 was passed on 1 August 2017. On the basis of the order, the plaintiff sought an amendment of the plaint under Order 6 Rule 17 on 14 August 2017 by seeking a declaration in respect of the sale deeds. The order under Exhibit- 50 was challenged in a civil revision application on 12 September 2017 and the plaintiff was served by substituted service in April 2018 and it was only on 24 July 2018 that the plaintiff sought to challenge the order under H

A Exhibit-50. Consequently, the challenge is belated and is an afterthought.

9. Mr Vinay Navare, learned Senior Counsel appearing on behalf of the appellant-plaintiff submitted that the High Court has erroneously upheld the finding of the Trial Judge that the application under Order 7 Rule 11 of the CPC had to be allowed. Under Order 7 Rule 11(d), a
B plaintiff shall be rejected “where the suit appears from the statements in the plaint to be barred by any law”. The appellant has sought a declaration against the third, fourth and fifth defendants in regard to their act of entering upon the property on 24 November 2012 and interfering with the peaceful possession of the plaintiff. An injunction has been sought
C against all the defendants restraining them from interfering with the peaceful possession of the plaintiff over the suit property. Section 34² of the Specific Relief Act indicates that

- D (i) A person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right;
- (ii) The court may in its discretion make a declaration that the plaintiff is so entitled and the plaintiff need not in such a suit ask for further relief; and
- E (iii) Under the proviso, no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title omits to do so.

It has been urged that the proviso to Section 34 applies to a situation where a plaintiff has sought a mere declaration of title but omits to seek further or consequential relief. The submission is that in the
F present case, the suit has been instituted to protect the possession of the plaintiff simpliciter without claiming a declaration of title. Seeking a

G ² “34. Discretion of court as to declaration of status or right-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

H Explanation.-A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

declaration of title is, according to the submission, not mandatory: what the proviso to Section 34 provides is that seeking a mere declaration of title without seeking further relief is impermissible. On these grounds, it is urged that the suit could not be held to be barred by Section 34 of the Specific Relief Act. Learned counsel urged that whether the suit would be *maintainable* in the absence of the plaintiff – appellant seeking a declaration of title is a distinct question, but it cannot be held to be barred by any law within the meaning of Order 7 Rule 11(d).

The appellant instituted a writ petition before the High Court on 23 July 2018, to challenge the order of the Trial Court allowing the application (Exhibit -50) for rejecting the plaint under Order 7 Rule 11. For clarity, it is necessary to extract the reliefs which were claimed before the High Court in the writ petition:

“1. ...quash and set aside the order passed below Exh: 50 (ANNEXURE-F) on 01/08/2017 in RCS No.4990/2012 (Sayyad -Vs.-Om Mittal and others) by the 5th Joint Civil Judge, Junior Division, Nagpur...”

2. Reject the application at Exh: 50 filed RCS No.4990/2012 (Sayyad -Vs.-Om Mittal and others) pending on the file of 5th Joint Civil Judge, Junior Division, in the interest of justice.”

10. The High Court has, in the course of its judgment, rejected the writ petition on the ground that it was “by way of an afterthought and belated”. This was on the premise that after the order of the Trial Judge dated 1 August 2017, the appellant filed an application under Order 6 Rule 17 on 14 August 2017 in terms of the liberty granted by the Trial Judge for amending the plaint to seek a declaration in regard to the sale deeds in question. The first and second defendants to the suit challenged the grant of the liberty by the Trial Judge by filing a revision application on 12 September 2017 and it was only on 24 July 2018 that the appellant – plaintiff sought to challenge the order rejecting the plaint under Order 7 Rule 11(d).

11. Mr Pankaj Kothari, learned Counsel appearing on behalf of the respondents - defendants raised a preliminary objection to the maintainability of the writ petition on the ground that against the rejection of the plaint, the remedy of the appellant was to file a regular first appeal since an order of rejection operates as a decree. It has been urged that the appellant, after having complied with the order of the Trial Court,

- A deliberately filed a writ petition, instead of an appeal, to avoid the issue of limitation in filing an appeal. Mr Navare, learned Senior Counsel contested the submission by urging that since a civil revision application had been filed by the first and second defendants before the High Court, the appellant- plaintiff was justified in seeking recourse to the writ jurisdiction of the High Court. Moreover, he submitted that the availability of a remedy of a first appeal under Section 96 of the CPC would not *ipso facto* bar a recourse to the writ jurisdiction.
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12. Section 2(2) of the CPC defines the expression ‘decree’ in the following terms:

- C “(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—
- D
- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.
- E Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”
- F Order 7 Rule 13 provides that the rejection of the plaint “on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action”.

- G The definition of “decree” in Section 2(2) “shall be deemed to include the rejection of a plaint”. Hence, the order of the Trial Court rejecting the plaint is subject to a first appeal under Section 96 of the CPC. The writ petition filed by the appellant was liable to be rejected on that ground. We therefore affirm the judgment of the High Court rejecting the writ petition, though for the above reason leave it open to the appellant to pursue the remedy available in law.

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13. The High Court while exercising its revisional jurisdiction accepted the plea of the first and second defendants that the Trial Judge, having allowed the application Order 7 Rule 11(d), was not justified in granting to the appellant-plaintiff liberty to amend the plaint by seeking appropriate reliefs and paying the court fee. In this context, it is necessary to advert to Order 7 Rule 11 which provides 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 returned 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 from 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.]”

The proviso quoted above deals with a situation where time has been fixed by the Court for the correction of the valuation or for supplying of the requisite stamp paper. Under the proviso, the time so fixed shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by a cause of an exceptional nature from complying within the time fixed by the court and that a refusal to extend time would cause grave injustice to the plaintiff. The proviso

A evidently covers the cases falling within the ambit of clauses (b) and (c) and has no application to a rejection of a plaint under Order 7 Rule 11(d). In the circumstances, the High Court was justified in coming to the conclusion that the further direction that was issued by the Trial Judge was not in consonance with law.

B 14. For the above reasons, we affirm the judgment of the Single Judge of the High Court:

- (i) allowing the revision application filed by the first and second defendants; and
- (ii) dismissing the writ petition filed by the appellant-plaintiff.

C Since the dismissal of the writ petition has been upheld on the ground that the order rejecting the plaint operates as a decree within the meaning of Section 2(2) of the CPC, the appellant is at liberty to take recourse to the remedy against the rejection of the plaint as prescribed by the CPC.

D 15. The appeals shall stand disposed of in the above terms.

16. Pending application(s), if any, stand disposed of.