

*Civil Revision***Present : The Hon'ble Justice Harish Tandon.**

Judgment on : 06.10.2010

**C.O. No. 2077 of 2008.****Mrinal Kanti Banerjee****-vs-****Santi Ranjan Kundu****Point:**

REJECTION OF PLAINT: In considering the application for rejection of plaint whether the Court can only look into the averment of the plaint-one of relief is barred under the law- Whether in considering application Order 7 Rule 11 of the Code compartmentalization dissection or segregation of the averments and/or reliefs is permissible-Code of Civil Procedure Order,1908 Order 7 Rule 11

**Facts:**

The opposite party instituted Title Suit no. 91 of 2008 in the 2<sup>nd</sup> court, Civil Judge (Junior division), Howrah praying for a decree for enforcement of agreement dated February 20, 2008 and for declaration that the said agreement is valid and enforceable. Further prayer was made to the extent that the revocation of the power of attorney dated 7.4.2008 done by the opposite party is void and an injunction restraining the opposite party from transferring, assigning and/or entering into an agreement for development with any third party.The said suit was filed on the basis that the petitioner is an absolute owner of premises of Shibtala Lane, Howrah and entered into an agreement on February 20, 2007 for development of the said premises. Pursuant to the said agreement the petitioner executed registered power of attorney in favour of the opposite party for

such development. It is contended that in terms of the said agreement for development, substantial amount has been incurred by the opposite party. The petitioner thereafter filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the plaint does not disclose any cause of action. It is further alleged that the opposite party has not complied with the provisions of Order 7 Rule 14 of the said Code. The opposite party denied the allegation made in the said application for rejection of the plaint filed by the petitioner in his objection before the trial court. In the light of the contention and the rival contention as aforesaid, the trial court dismissed the said application on contest. Hence this instant application.

**Held:**

While considering an application **under** Order 7 Rule 11 of the Code the court will not look at any other averment excepting the statement and/or averment made in the plaint. Generally, the court is required to adjudicate and decide the matter in dispute and/or issues on merit but an exception is carved out by way of provision contained under Order 7 Rule 11 of the Code. While dealing with such an application the matter should come within the strict purview of the provisions contained under Order 7 Rule 11 of the Code. While considering an application under Order 7 Rule 11 of the Code, it is not a particular plea which is required to be considered but the whole plaint has to be read.

**Para-9**

The plaintiff may claim several reliefs in one suit it may be that one of such relief is barred under the law but the provision contained under Order 7 Rule 11 of the Code does not authorise any compartmentalization dissection or segregation of the averments and/or reliefs. Ultimately the court

while deciding the matter on merit or after the trial is complete may come to a finding that one or more of the reliefs claimed by the plaintiff is not tenable and/or maintainable. **Para-10**

While dealing with an application under Order 7 Rule 11 (d) of the Code no amount of evidence can be looked into as the issues on merit which may arise is not within the realm of the court at that stage. There is a distinction between a non-disclosure of the cause of action and a defective cause of action or disclosure of the cause of action but the same is barred by law. **Para-11**

It is specifically contended that revocation of the power of attorney is void inasmuch as the developer being an agent has acquired an interest in the property and as such the agency in which the agent acquires interest in the property being the subject matter of the agency cannot be terminated to the prejudice of such interest of the agent in absence of an express contract **Para-12**

**Cases Cited:**

**2006(2) CHN 396 -----Vipin Bhimani & Anr. Vs. Sunanda Das & Anr.**

**Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner -----AIR 2004 SC 1800.**

For the petitioner : Mr. Sujash Ghosh Dastidar  
Ms. Sankari Roy

For the Opposite Party : Mr. Debasish Roy  
Mr. Samrat Mukherjee

**The Court:**

This revisional application is directed against an order no. 6 dated June 16, 2008 passed by the Civil Judge (Junior division), 2<sup>nd</sup> court, Howrah in Title Suit no. 91 of 2008 dismissing an

application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant/petitioner on contest.

2. The opposite party instituted Title Suit no. 91 of 2008 in the 2<sup>nd</sup> court, Civil Judge (Junior division), Howrah praying for a decree for enforcement of agreement dated February 20, 2008 and for declaration that the said agreement is valid and enforceable. Further prayer was made to the extent that the revocation of the power of attorney dated 7.4.2008 done by the opposite party is void and an injunction restraining the opposite party from transferring, assigning and/or entering into an agreement for development with any third party.

3. The said suit was filed on the basis that the petitioner is an absolute owner of premises of Shibtala Lane, Howrah and entered into an agreement on February 20, 2007 for development of the said premises. Pursuant to the said agreement the petitioner executed registered power of attorney in favour of the opposite party for such development. It is contended that in terms of the said agreement for development, substantial amount has been incurred by the opposite party.

4. The petitioner thereafter filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the plaint does not disclose any cause of action. It is further alleged that the opposite party has not complied with the provisions of Order 7 Rule 14 of the said Code.

5. The opposite party denied the allegation made in the said application for rejection of the plaint filed by the petitioner in his objection before the trial court. In the light of the contention and the rival contention as aforesaid, the trial court dismissed the said application on contest.

6. The petitioner assailed the said order on the ground that the suit as framed is barred under section 14(3)(c) of the Specific Relief Act. In support of such submission the petitioner relied upon a judgment reported in **2006(2) CHN 396 (Vipin Bhimani & Anr. Vs. Sunanda Das & Anr.)** that the suit at the instance of the developer is not maintainable.

7. The opposite party disputed the contention of the petitioner that the suit is not maintainable. The opposite party contends that the relief sought for in the suit cannot be said to be barred by law so as to make it amenable within the mischief of Order 7 Rule 11 of the Code of Civil Procedure.

8. Having considered the submission made at the bar, it is not in dispute that the point now urged by the petitioner was not taken before the trial court. Even in an application under Order 7 Rule 11 of the Code there is no whisper as to the non-maintainability of the suit being barred under the provision of section 14(3)(c) of the Specific Relief Act.

9. While considering an application under Order 7 Rule 11 of the Code the court will not look at any other averment excepting the statement and/or averment made in the plaint. Generally, the court is required to adjudicate and decide the matter in dispute and/or issues on merit but an exception is carved out by way of provision contained under Order 7 Rule 11 of the Code. While

dealing with such an application the matter should come within the strict purview of the provisions contained under Order 7 Rule 11 of the Code. It is a settled law that while considering an application under Order 7 Rule 11 of the Code, it is not a particular plea which is required to be considered but the whole plaint has to be read.

10. The plaintiff may claim several reliefs in one suit it may be that one of such relief is barred under the law but the provision contained under Order 7 Rule 11 of the Code does not authorise any compartmentalization dissection or segregation of the averments and/or reliefs. Ultimately the court while deciding the matter on merit or after the trial is complete may come to a finding that one or more of the reliefs claimed by the plaintiff is not tenable and/or maintainable. Such is the proposition laid down in case of **Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner** reported in **AIR 2004 SC 1800**.

11. While dealing with an application under Order 7 Rule 11 (d) of the Code no amount of evidence can be looked into as the issues on merit which may arise is not within the realm of the court at that stage. There is a distinction between a non-disclosure of the cause of action and a defective cause of action or disclosure of the cause of action but the same is barred by law.

12. It is specifically contended that revocation of the power of attorney is void inasmuch as the developer being an agent has acquired an interest in the property and as such the agency in which the agent acquires interest in the property being the subject matter of the agency cannot be

terminated to the prejudice of such interest of the agent in absence of an express contract (**see AIR 2003 Cal 178 Bhaskar Aditya Vs. Minati Majumdar**).

13. Thus on the above reasons, I do not find any illegality and/or irregularity committed by the trial court in dismissing an application under Order 7 Rule 11 of the Code filed by the petitioner in the trial court.

14. Thus no interference is called for. The revisional application is, therefore, dismissed.

Hence, there shall be no order as to costs.

**(Harish Tandon, J.)**

TM