



LITIGATION



ELP Litigation: Update



HON'BLE SUPREME COURT HELD THAT THE PLAINT CANNOT BE AMENDED ONCE THE SAME HAS BEEN REJECTED AS BEING BARRED BY LAW (UNDER ORDER 7 RULE 11 (d), CPC.)

*Sayyed Ayaz Ali Vs Prakash G Goyal & Ors*¹

INTRODUCTION

- The issue concerns the interpretation of the proviso to Order 7 Rule 11 Civil Procedure Code, 1908 (**CPC**) i.e. once the suit is rejected on the grounds and is barred by law under Order 7 Rule 11 (d) of the CPC, an amendment to the Plaint cannot be allowed. Order 7, Rule 11 of the CPC states as to when a Plaint/suit shall be rejected and includes cases when the Plaint does not disclose a cause of action, or reliefs claimed are not adequately valued, or insufficient court fees having been paid, or Plaint is barred by any law, etc. The present case dealt with Rule 11(d) which states that the Plaint can be rejected if *"the suit appears from the statement in the plaint to be barred by any law"* and the proviso to rule 11 which provides for extension of time for correction of valuation or payment of court fees.

FACTUAL BACKGROUND

- In 2012, the Sale Deeds for 2 plots of land (Plot numbers 23A and 24) were executed by the Appellant/Plaintiff viz. Sayyed Ayaz Ali in favour of Defendant Nos. 1 and 2 i.e. Prakash Goyal & Anr. purportedly as a security for the repayment of the loan taken by the Plaintiff.
- In the same year, Sale Deeds were also executed for another 7 plots of land (plot nos. 25 to 29, 34 and 34A) in the joint names of the Plaintiff together with Defendant Nos. 1 and 2 purportedly as a security for the repayment of the loan taken by the Plaintiff.
- Thereafter, owing to certain disputes between the parties, the Plaintiff filed a Suit before the Fifth Joint Civil Judge, Junior Division, Nagpur *inter alia* for the following reliefs:

¹ 2021 SCC OnLine SC 472

- a. 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.
 - b. Pass a decree for permanent perpetual injunction against Defendants, their agents servants and the person acting on their behalf. This would restrain 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 in the interest of justice.
- In the Suit, the Defendant No. 2 filed an application under Order 7 Rule 11 CPC for rejection of the Plaint on the grounds that whilst the Plaintiff had admitted to execution of sale deeds in favor of Defendant Nos. 1 and 2, the Plaintiff had neither sought cancellation of the sale deed on the grounds that the same were executed only as a security for the loan taken by the Plaintiff, nor sought a declaration that the sale deeds did not confer any right, title or interest on the Defendants. As such the suit is barred by Section 34 of the Specific Relief Act, 1963 (**Act**).
 - The Trial Court (vide its Order dated 1 August 2017) whilst allowing the application filed by Defendant No. 2 under Order 7 Rule 11 of the CPC, directed the Plaintiff to seek proper relief and pay the court fees thereon. It rejected the Plaint under Order 7 Rule 11(d) of the CPC.
 - The Order passed by the Trial Court was assailed by the Defendants before the Nagpur Bench of the Bombay High Court in a Civil Revision Application. The Plaintiff also challenged the order by way of a Writ Petition.
 - The High Court by its common judgement and order dated September 14, 2018 set aside the Order of the Trial Court and inter alia held that 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 Act. It was further held that having rejected the Plaint under Order 7 Rule 11(d) of the CPC, the Trial Court had committed an error in granting time to the Plaintiff to amend the Plaint.

ISSUES OBSERVATIONS AND FINDINGS

- The issue which arose for consideration before the Hon'ble Supreme Court was whether the Trial Court was justified in granting liberty to the Plaintiff to amend the Plaint while rejecting it under Order 7 Rule 11(d) i.e. on the grounds that it is barred by law (in this case Section 34 of the Act).
- While considering the scope and ambit of the *proviso* to Order 7 Rule 11, the Hon'ble Supreme Court held that the proviso to Order 7 Rule 11 contemplates a situation where time has been fixed for correction of the valuation or supplying of requisite stamp paper. The time so fixed shall not be extended by the Court unless the Plaintiff was prevented by a cause of an exceptional nature from complying within the time fixed by the Court and refusal of extension would cause grave injustice to the Plaintiff.
- The proviso only covers the cases falling under clauses (b) and (c) of Order 7 Rule 11 CPC and has no bearing or application to a rejection of a Plaint under clause (d) i.e. "where the suit appears from the statement in the Plaint to be barred by any law".

CONCLUSION AND ANALYSIS

- A bare perusal of the provision would suggest that the *proviso* to Order 7 Rule 11 CPC was in fact inserted to enable the Plaintiff to cure the defects as regards court fees and valuation of suit within a prescribed time which the Plaintiff was previously prevented from doing, due to some exceptional circumstances and a refusal of which would cause grave prejudice to the Plaintiff.
- Having regard to clauses (b) and (c) of Order 7 Rule 11, the Hon'ble Supreme Court by the aforesaid judgement, has reinforced the object and intent of the proviso.
- The case highlights the importance of drafting Plaints with utmost care and approaching courts for the proper reliefs in the given facts and circumstances so as to avoid delays and rejection.

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