FULL BENCH

Before A. D. Koshal, S. S. Sandhawalia and Prem Chand Jain, JJ.

BALWANT SINGH C/o HARMAN BACALITE INDUSTRIES,—*Petitioner.*

versus

THE STATE BANK OF INDIA, ETC.,—*Respondents.*

Civil Revision No. 420 of 1973.

February 12, 1976.

Code of Civil Procedure (Act V of 1908)—Order 7, Rule 11—Applicability of—Plaint disclosing cause of action, regarding part of the claim against some of the defendants only—Whether to be rejected as a whole—Names of the defendants against whom no cause of action disclosed—Whether to be struck off—Suit against the remaining defendants—Whether can proceed.

Held, that a plain reading of clause (a) of rule 11, Order VII of the Code of Civil Procedure, 1908 shows that it applies only in a case where a plaint does not disclose any cause of action at all. In a case, where there is joinder of parties and causes of action and a decree is bound to be passed in respect of one or more of the causes of action and against some of the defendants, the provisions of Rule 11(a) of Order 7 of the Code cannot legally be invoked. There is a clear distinction between a case where the plaint itself does not disclose any cause of action and a case in which, after the parties have produced oral and documentary evidence, the Court on consideration of the entire matter, comes to the conclusion that there was no cause of action for the suit. In the former case, the provisions of Order 7, rule 11 are attracted, but in the latter case, after adjudication, the suit has to be dismised. A cause of action is a bundle of material facts alleged by the plaintiff to make out his right to sue and claim relief against the defendants. If on scrutiny by the Court it is found that certain facts do not give him right to sue some of the defendants in respect of the whole relief or any part of the relief claimed, than the plaint does not deserve to be rejected nor after adjudication the entire suit will be dismissed. A decree will have to be passed without any amendment against such defendants only as may be found to be liable and according to their respective liability. Hence the provisions of Order 7, Rule 11(a) of the code are attracted only in a case where by reason of the plea that a plaint does not disclose a cause of action, the plaintiff is to be wholly non-suited, but this rule will have no applicability to cases where a plaint discloses a cause of action in respect of the part of the claim against some of the defendants. In that event the names of the defendants against whom there is no cause of action

or the suit is barred by law, have to be struck off and the suit can proceed against the remaining defendants.

Case referred by Hon'ble Mr. Justice A. D. Koshal, dated 4th October, 1974, for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice A. D. Koshal, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain decided the case on 12th February, 1976. After deciding the question referred to returned the case to the Hon'ble Single Judge for disposal of the case on merits.

Petition under section 44 of the Punjab Courts Act and section 115 of Civil Procedure Code for revision of the order of Shri M. K. Bansal, Sub-Judge 1st Class, Sonepat, dated the 7th February, 1973 holding that the plaint is only to be rejected against defendant No. 6 alone and ordering that the name of defendant No. 6 be struck down from the plaint. Qua the other defendants the plaint is not liable to be rejected and as such the suit will proceed.

B. S. Gupta, Advocate with Gurdev Singh, Advocate, *for the the petitioner.*

R. K. Chhibbar, Advocate with Rajinder Paul, Advocate, *for respondent No.* 1, Mohinder Singh Poonia, Advocate, *for respondent No.* 6.

JUDGMENT OF THE FULL BENCH

PREM CHAND JAIN, J.—Balwant Singh has filed this petition under section 115 of the Code of Civil Procedure, against the order of the learned Subordinate Judge 1st Class, Sonepat, dated 7th February, 1973, refusing to reject the plaint as a whole in a suit filed by the State Bank of India, respondent No. 1 (hereinafter referred to as the Bank) for the recovery of Rs. 1,17,268.59 Paise, against the petitioner and eight other defendants. The relevant facts of the case, may briefly be stated, thus: —

On 7th January, 1966, the Bank granted instalment credit facility to Messrs Cooks Manufacturing, Sonepat, defendant No. 1 (hereinafter referred to as the firm), to the extent of Rs. 14,950, which was repayable by the firm in 12 instalments spread over a period of three years. Defendant No. 5 stood surety for the repayment of the amount advanced to the firm. On 18th July, 1966, the firm was granted overdraft facility to the extent of Rs. 10,000 by the Bank and in this account a sum of Rs. 7,291.31 Paise was due from the

firm on 13th November, 1966, for the repayment of which, defendant No. 4 stood surety on the 11th November, 1967. The amount due on this account swelled to Rs. 9,178.01 Paise, as on the date of the suit. On 11th November, 1967, the firm was also granted a cash credit loan accommodation by the Bank to the extent of Rs. 80,000 repayment of which, along with any interest which might become due, was guaranteed by defendant No. 4. On the date of the suit, a sum of Rs. 99,640.58 Paise had become due in this account. Defendants Nos. 2 and 3 are the partners of the firm. On 17th June, 1966, defendant No. 2, created a mortgage by deposit of title deeds of property detailed in paragraph 13 of the plaint in favour of Bank, which later on learnt that the said property had been fictitiously mortgaged by defendant No. 2 in favour of defendants Nos. 6 and 7, both of which are Co-operative Societies. On the basis of the allegations referred to above, the plaintiff prayed for a decree for an amount of Rs. 1,17,268.59 Paise with costs and with future interest at the rate of 9 per cent per annum from the date of suit till the date of its realisation.

The defendants contested the suit. After the written statement was filed, defendant No. 4 made an application on 22nd August, 1972, praying that the plaint be rejected in pursuance of the provisions of Rule 11 of Order VII of the Code of Civil Procedure. The application was resisted by the Bank. After hearing the learned counsel for the parties, the trial Court found that the plaint discloses no cause of action as against defendant No. 4 in respect of the amount of Rs. 8,450 claimed on account of instalment credit facility; that the plaint discloses no cause of action against defendant No. 5 *qua* the overdraft facility and cash credit loan accommodation and that there being no allegation in the plaint that any notice under section 79 of the Punjab Co-operative Societies Act had been served on defendants Nos. 6 and 7, the plaint discloses no cause of action against them. On the basis of the aforesaid findings, the trial court held that the plaint was to be rejected not as a whole but only against defendants Nos. 6 and 7 whose names the trial Court directed to be struck off from the plaint,—*vide* impugned order. As earlier observed, it is against that order of the learned Subordinate Judge that the present revision petition has been filed.

This petition came up for hearing before brother Koshal, J. considering the importance of the question of law involved, brother

Koshal, J., thought it proper to refer the matter for decision to a larger Bench. That is how we are seized of the matter.

The short question that requires determination in this case is, whether a plaint which does not disclose a cause of action in respect of the part of the claim against some of the defendants, is liable to be rejected in its entirety.

In order to decide the controversy, it would be appropriate to reproduce certain relevant provisions of the Code of Civil Procedure, which read as under:—

"*Order* 7 *rule* 11.

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 writen 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.

Order 1 *rule* 4(b).

Judgment may be given without any amendment—

(a) —

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Order 1 *rule* 5.

It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Order 1 *rule* 9.

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and insterests of the parties actually before it.

Order 2 *rule* 6.

Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient."

On the basis of clause (a) of rule 11, Order VII of the Code of Civil Procedure, what was sought to be argued by Mr. B. S. Gupta, learned counsel for the petitioner, was that the plaint did not disclose any cause of action against the petitioner and some of the other defendants and as such was liable to be rejected *in toto*. According to the learned counsel, on principle as well as the law as it stands, a plaint cannot be rejected in part, with the result that a plaint which only discloses a cause of action in respect of the part of the claim against some of the defendants, has to be rejected as a whole. On the other hand, Mr. Chhibber, learned counsel for the respondents, contended that clause (a) did not envisage the rejection of the plaint as a whole if the same disclosed a cause of action in respect of the part of the claim against some of the defendants, and such a claim was bound to be tried by the Court. After giving my thoughtful consideration to the entire matter. I find myself unable to agree with the contention of Mr. Gupta, learned counsel for the petitioner.

From the perusal of the various rules of Order 1 and Order 2 referred to above, it is abundantly clear that no technical objection in respect of misjoinder of causes of action and parties would non-suit the plaintiff wholly. It is further evident that in enacting these

salutary rules of law, the intention of the Legislature has been to prevent the technicalities overcoming the ends of justice and from operating as a means of circuity of litigation. To further achieve this end, section 99 of the Code of Civil Procedure was added, which is evidently based upon the principle that the rules of procedure are made to subserve the ends of justice and not to defeat them.

Now, in this context, adverting to the provisions of Order 7, rule 11 of the Code of Civil Procedure, I find that the rule mentions four grounds on which the Court is bound to reject the plaint. Clause (a) with which we are concerned, deals with the situation where the plaint does not disclose a cause of action. To my mind, the plain reading of clause (a) shows that it would apply only in a case where a plaint does not disclose any cause of action. The word 'a' in this clause would mean 'any', and when word 'any' is read in place of 'a', then it would make it clear that the intention of the Legislature was to empower the Court to reject a plaint only where it did not disclose any cause of action. If the intention of the Legislature had been to give power to the Court to reject the plaint, where it did not disclose a cause of action in respect of the part of the claim against some of the defendants, then this clause would have been differently worded. In a case, where there is joinder of parties and causes of action and a decree is bound to be passed in respect of one or more of the causes of action and against some of the defendants, the provisions of Rule 11(a) of Order 7 cannot legally be invoked. Any other interpretation would not only offend the common sense and the dictates of justice but would also offend the provisions about the misjoinder of parties and causes of action referred to above. There is a clear distinction between a case where the plaint itself does not disclose any cause of action and a case in which, after the parties have produced oral and documentary evidence, the Court on consideration of the entire matter, comes to the conclusion that there was no cause of action for the suit. In the former case, the provisions of Order 7, rule 11 are attracted, but in the latter case, after adjudication, the suit has to be dismissed. However, if after trial, it is found that part of the claim has been substantiated, then a decree in respect of that claim has to be passed and in that eventuality, the whole suit would not be dismissed. After all, a cause of action is a bundle of material fact alleged by the plaintiff to make out his right to sue and claim relief against the defendants. But if on scrutiny it is found that certain

facts do not give him right to sue some of the defendants in respect of the whole relief or any part of the relief claimed, then the plaint would not deserve to be rejected nor after adjudication the entire suit would be dismissed, but as envisaged by Order 1, rule 4 of the Code of Civil Procedure, a decree would have to be passed without any amendment against such defendants only as may be found to be liable and according to their respective liability. It may further be observed that under Order 1, rule 5 of the Code of Civil Procedure, it is not necessary that every defendant should be interested as to all the relief claimed in any suit against him. In this view of the matter, I am definitely of the opinion that a plaint which does not disclose a cause of action in respect of the part of the claim against some of the defendants, cannot be rejected as a whole. This view of mine finds full support from the decisions of various High Courts to which I am presently making a detailed reference. In *L. Collins* v. *Charles Booth and Co., Ltd.* (1), it was observed thus:—

> The rule in England as far as I am aware has been as in India, viz., to exercise, the powers under Order VII, Rule 11 with great circumspection and only if the Court is satisfied that even if the plaintiff proves all the allegations of fact he sets forth in the plaint, he would still not be entitled to any relief whatever."

In *Shankarrs Balaji and others* v. *Shambihari and others* (2), the learned Judges observed as under :—

> "Our conclusion is that the plaint discloses no cause of action against defendant 6 the Provincial Government. This would involve a rejection of the plaint under Order 7, Rule 11 (a) if defendant 6 had stood alone, but it is clearly not possible to reject a plaint which discloses a cause of action against certain defendants and none against the rest. The only feasible course in such a case is to discharge the defendant against whom no cause of action is disclosed, and have his name struck off from the plaint; and that is what we would have done. But as the plaintiffs do not wish to amend their plaint there is nothing more we can do."

(1) A.I.R. 1921 Sind 106.

(2) A.I.R. 1951 Nagpur 419.

In *Ajit K. Saha* v. *Nagendra N. Saha and another* (3), it has been observed thus:—

> "In a case where there is a joinder of causes of action and a decree is bound to be passed in respect to one or more of the causes of action, a plea by way of demurrer cannot be taken. A plea by way of demurrer can only be taken when by reason of the plea the plaintiff is wholly non-suited."

In *Mst. Chandani* v. *Rajasthan State and others* (4), the learned Judge observed thus:—

> "On a careful consideration of these rival views, I am disposed to accept the latter as the sounder of the two. Order 7, Rule 11, Civil Procedure Code, undoubtedly lays down, *inter alia* that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. It seems to me, however, that this rule, would be attracted into its full application where the suit as a whole would be so barred, and different considerations may reasonably arise where such a suit happens to be barred against some of the defendants but may still be good, against the others.
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> With utmost respect, I have not been able to persuade myself to accept the view that even where such a suit may be good against some of the defendants in spite of its being bad against certain others, the whole suit must necessarily be thrown out. This seems to me to be opposed to all considerations of common sense and to the dictates of justice, nor do I think that such a result should be held to be a necessary consequence of the rule as it is generally embodied in clause (d) of Rule 11, and to my mind it is normally intended to be applicable to a case where there is a single plaintiff or a single defendant and a suit by or against him is wholly barred by any law.

Thus, where a plaint does not disclose a right of action against one or some of the defendants but it does against the rest,

(3) A.I.R. 1960 Calcutta 484.

(4) A.I.R. 1962 Raj. 36.

or where a suit would be barred by law against one or some of the defendants but not against the rest, the just and proper course, in my opinion, should be not to reject the plaint as a whole but to strike out the names of the defendants against whom there is no cause of action or the suit is barred by law and allow it to proceed against the rest. This would of course be subject to the paramount consideration that such a suit, as a matter of substantive law, would be maintainable against the remaining defendants."

Let me now proceed to examine various judicial pronouncements produced in support of the proposition that in case a plaint does not disclose a cause of action in respect of the part of the claim against some of the defendants, then the whole plaint has to be rejected. Mr. Gupta learned counsel, placed reliance on (*Sree Rajah*) *Venkata Rangiah Appa Rao Bahadur and another* v. *Secretary of State and others* (5), (*Sree Rajah*) *Venkata Rangiah Appa Rao Bahadur and others* v. *Secretary of State and others* (6), *Maqsud Ahmad and another* v. *Mathra Datt and Co. and others* (7), *Noor Mohammad* v. *Abdul Fateh and others* (8), *Harihar Mahapatra and others* v. *Hari Otha and others* (9), *and Bansi Lal* v. *Som Parkash and others* (10). After going through all these decisions, I find that none of them is relevant to the point in controversy and is of no assistance in deciding the point agitated by the learned counsel for the petitioner. In *Venkata Rangiah Appa Rao Bahadurs case*, the learned Judge of the Madras High Court, found there was non-compliance of the provisions of section 80 of the Code of Civil Procedure and that non-compliance with the requisites of section 80 entailed rejection of plaint under clause (d) of rule 11. The learned Judge further observed that even if clause (d) of rule 11 did not apply, then also the plaint was liable to be rejected on the ground that it did not comply with the provisions of section 80. This view of the learned Judge was affirmed by the Letters Patent Bench in the same case reported in A.I.R. 1935 Madras Page 389. In *Bansi Lal's case* (supra), the facts were that the plaintiff filed a suit challenging the five alienations. An objection was raised

(5) A.I.R. 1931 Madras 175.
(6) A.I.R. 1935 Madras 389.
(7) A.I.R. 1936 Lahore 1021.
(8) A.I.R. 1941 Patna 461.
(9) A.I.R. 1950 Orissa 257.
(10) A.I.R. 1952 Pb. 38.

that the claim was under-valued. The objection was upheld and the plaintiff was asked to make up the deficiency in court-fee, instead of making up the deficiency in court-fee, the plaintiff amended the plaint and limited his challenge only to three alienations. On these facts, the learned Judge held that the plaint had to be rejected *in toto*. I fail to understand how these decisions have any relevancy to the point in issue. So far as *Maqsud Ahmad's case* (supra) is concerned, the same again is wholly irrelevant and no reference need be made to its facts. In *Noor Mohammad's case* (supra), again, the question of rejection of plaint was decided on the basis of the provisions of section 80 of the Code of Civil Procedure, and that decision is of no help. To the same effect is the decision in *Harihar Mahapatra's case* (supra).

The only decision which needs consideration is of the Andhra Pradesh High Court in *Kalepu Pala Subrahmanyam* v. *Tiquti Venkata Peddiraju and others* (11). In that case the learned Subordinate Judge, held that the suit was barred by time in respect of items 1, 2 (a), 2(b), 2(c) and 3(a) of plaint B Schedule and items 1 and 2(a) of plaint C Schedule and rejected the plaint only in respect of these items. In respect of the other claims, the plaintiff was directed to file an application under section 47 of the Code of Civil Procedure A revision was filed against the said order by the plaintiff. The learned Judge dismissed the revision petition and passed an order to the effect that when a part of the claim had been held to be time-barred. then the whole plaint was liable to be rejected. With utmost respect, I am unable to agree with this view of the learned Judge. If there are various claims in the plaint, out of which some are time-barred. then the plaint is not liable to be rejected and the suit has to proceed in respect of the claims which are within limitation.

As a result of the above discussion, I hold that the plea raised by the petitioner is untenable and the contrary view is neither sound nor just and is not warranted by the language of the statute. Consequently, my answer to the question posed is that the provisions of Order 7 Rule 11 (a) of the Code of Civil Procedure, would be attracted only in a case where by reason of the plea that a plaint does not disclose a cause of action, the plaintiff is to be wholly non-suited, but this rule would have no applicability to cases where a plaint discloses a cause of action in respect of the part of the claim against some of the defendants, as in that event the names of the

(11) A.I.R. 1971 Andhra Pradesh 313.

defendants against whom there is no cause of action or the suit is barred by law, have to be struck off and the suit has to proceed against the remaining defendants. The case would now go back to the learned Single Judge for disposal on merits.

KOSHAL, J.—I fully agree and would like to emphasise that the very idea of a plaint being rejected "in part" is repugnant to the provisions of rule 11 of order VII of the Code of Civil Procedure. The plaint in a suit is the document evidencing the suit and not the suit itself and can, therefore, either be rejected or retained which, in other words, merely means that it can either be thrown out or proceeded with. It cannot be torn up in two parts, one of which is discarded and the other entertained. This is clearly deducible from the language of the rule. Expressions like "in its entirety" or "in part" are thus wholly inept in relation to the rejection of the plaint

SANDHAWALIA, J.—I agree with my learned brother Jain, J.

B. S. G

FULL BENCH

Before S. S. Sandhawalia, Man Mohan Singh Gujral and

S. C. Mital, JJ.

THE STATE OF PUNJAB,—*Plaintiff-Appellant.*

versus

TEJA SINGH, SON OF HARNAM SINGH,—*Respondent.*

Criminal Appeal No. 1280 of 1971.

February 16, 1976.

Prevention of Food Adulteration Act (XXXVII of 1954)—Section 16(a)—Prevention of Food Adulteration Rules (1955)—Rule 5, Appendix B, Clause A. 11—Analysis of milk—Public Analyst disclosing the percentages of the various constituents thereof—Such percentages—Whether can be added to determine the overall deficiency or otherwise of the milk from its prescribed standard—Court—Whether entitled to assume a slight or reasonable margin of error in the conclusions of the Public Analyst—Negligible or marginal deviation from the prescribed standard—Whether can be ignored and acquittal recorded.