

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

C.R.P. No.01 of 2013.

[Arising out of the order dated 22.01.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No. 372 of 2012.]

Aditya Prasad Kanungo, aged about 52 years, S/o. Late Gostha Bihari Kanungo, resident of Plot No.N-5/519, IRC Village, Nayapalli, Bhubaneswar, Dist. - Khurda.

... **Petitioner.**

- Versus -

1. Arabind Kishore Agarwal, aged about 43 years, S/o. Tejpal Agarwal, Proprietor, Shree Maa Marbles, Plot No.844, Bomikhal, Bhubaneswar, P.S. - Laxmisagar, Dist. - Khurda.

... **Opp. Party.**

2. Sitansu Prasad Kanungo, aged about 49 years, S/o. Late Gostha Bihari Kanungo, resident of D.S.T.E. Project, Block No.2, Rail Kunj, Chandrasekharpur, Bhubaneswar, Dist. - Khurda.

... **Proforma Opp. Party.**

Counsel :

For Petitioner : Shri J. Das & Associates.
For O.P. No.1 : Shri R.K. Rout & Associates.
For O.P. No.2 : Shri J. Das & Associates.

Date of argument : 25.06.2014.

Date of order : 11.07.2014.

O R D E R

The order dated 22.01.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No. 372 of 2012, rejecting the petition filed by defendants (petitioner and O.P. No.2 herein) under Order 7, Rule 11, C.P.C. read with section 151 of the C.P.C. is under challenge in this revision.

2. Factual matrix leading to the case of the petitioner is that opposite party No.1 being the plaintiff has filed C.S. No.372 of 2012 against him and opposite party No.2. Opposite party No.1 is the tenant, whereas petitioner and opposite party No.2 are landlords. There was an agreement between plaintiff and defendants executed on 01.11.2009 for a period of three years, basing on which plaintiff took the suit premises on a monthly rent basis for running his business. Plaintiff was regularly paying rent to the defendants. It is the case of the petitioner that before execution of this agreement, he had filed C.S. No.432 of 2009 against the present defendants, as they had made attempt to evict him from the suit premises. The said suit was ended in compromise. Thereafter, a fresh agreement was executed on 19.11.2009 to lease out the suit premises to the plaintiff for a period of three years, as stated above, commencing from 01.11.2009 to 31.10.2012. But, before expiry of three years, the defendants falsely alleged about default in making payment of house rent by the plaintiff, although he was paying rent regularly and obtaining money receipt. Finally, on 25.07.2012, defendant No.2 threatened the plaintiff to forcibly evict him from the suit

premises for which he has filed the present suit for permanent injunction against the defendants praying to restrain them from evicting him from the suit land without due process of law.

3. Petitioner and opposite party No.2 herein, who are defendants in the Court below, filed a petition on 18.08.2012 to advance the record so that they would file a petition under Order 7, Rule 11 of the C.P.C. to reject the plaint. On 30.08.2012, defendant No.1 being opposite party No.1 in I.A. No.397 of 2012, arising out of C.S. No.372 of 2012, filed objection stating that the suit is barred by *res judicata* as the previous suit vide C.S. No.432 of 2009 has been disposed of between the parties. He has taken a plea that this suit cannot lie on the self-same cause of action as has already been decided in C.S. No.432 of 2009.

4. After hearing, the learned Civil Judge (Jr. Division) disposed of the matter on 22.01.2013 stating that the cause of action, which has arisen in this case, is different from that of the earlier suit for which he refused to accept the objection of the defendants to reject the plaint under Order 7, Rule 11 of the C.P.C. Being aggrieved by the said order, the defendants have filed the present revision praying to set aside the same. Hence the petition.

5. Learned counsel appearing for the petitioner submitted that the lower Court has committed error by not rejecting the plaint. Since there has already been compromise in the previous suit i.e. C.S. No.432 of 2009, the present suit on the

self-same cause of action does not lie and the same is required to be considered under Order 7, Rule 11 of the C.P.C.

6. On the other hand, learned counsel appearing for opposite party No.1 submitted that as there is fresh cause of action, the suit cannot be rejected under Order 7, Rule 11 of the C.P.C. inasmuch as there is no question of applicability of the principles of *res judicata* in the matter.

7. Perused the lower Court record, the petition and the objection. Order 7, Rule 11 of the C.P.C. states in the following manner :

“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 under-valued, and the plaintiff, on being required by the Court to so 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 written 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-papers 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-papers, 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”.

8. The aforesaid provisions show that if there is no cause of action, then only the plaint can be rejected. On the

contrary, if it is apparent on the face of the record that there should be no cause of action, then only the plaint can be considered for rejection.

9. On going through the materials on record, it appears that there is a civil suit between the parties filed vide C.S. No.432 of 2009 and the same was ended in compromise. According to the compromise dated 19.11.2009, the period of lease agreement of the suit house was extended for three years w.e.f. 01.11.2009. It is an admitted fact that petitioner (defendant No.1) and opposite party No.2 (defendant No.2) are landlords and opposite party No.1 (plaintiff) is the tenant. The aforesaid agreement formed a part of the compromise decree between the parties in C.S. No.432 of 2009.

10. On going through the plaint in C.S. No.372 of 2012, it appears that petitioner and opposite party No.2 have made allegation against opposite party No.1 about his default in making payment of rent and, finally, on 25.07.2012 opposite party No.2 threatened opposite party No.1 to evict him from the suit land without following due process of law. When the agreement is made for three years, the allegation of opposite party No.1 pertains to fresh cause of action. Apart from this, fresh cause of action is to be proved by adducing evidence. So, it cannot be said that the opinion to the effect that no cause of action has arisen cannot be arrived at without leading evidence. In either way, it does not appear that the present plaint filed by opposite party No.1 is hit by Order 7, Rule 11 of the C.P.C.

Moreover, the question of *res judicata* arises where issues have been decided finally and, in the instant case, the earlier suit has been ended in compromise and the present suit has got fresh cause of action requiring leading of evidence. For that, the principle of *res judicata*, at present, does not apply.

11. Considering all the aspects, as stated above, I find that the order passed by the learned Civil Judge (Jr. Division) by rejecting the prayer of the petitioner is justified inasmuch as no case is made out for rejection of the plaint under Order 7, Rule 11 of the C.P.C. Thus, the order of the lower Court, which has been impugned in this revision, does not warrant interference by this Court. Hence ordered :

O R D E R

The revision petition stands dismissed without cost and the order dated 22.01.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No. 372 of 2012 is hereby confirmed.

Since a period of three years has already elapsed from the date of agreement as on today, the parties are directed to cooperate the Court below to dispose of the matter within two months hence. The learned Civil Judge (Jr. Division), Bhubaneswar would do well to dispose of the suit within the said period by affording reasonable opportunity to both the parties.

**District Judge, Khurda
at Bhubaneswar.
11.07.2014.**

Dictated, corrected by me and pronounced in the open Court this day the 11th July, 2014.

**District Judge, Khurda
at Bhubaneswar.
11.07.2014.**