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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.97 of 2007 & C.M. Appl. No.7409 of 2007

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11.02.2010

KUMKUM GUPTA & ANR.

.....Petitioners

Through: Ms. Anu Bagai, Advocate.

Versus

ALOK GOYLE & ANR.

.....Respondents

Through: Mr. Vinay Bhasin, Senior Advocate with
Mr. J.C. Mahindroo & Mr. H.L. Raina,
Advocates for R-1.

Mr. Anurag Chawla, Advocate for R-2.

Mr. Rajesh Mahajan, Advocate for R-3.

Date of Reserve: 4th February, 2010

Date of Order: 11th February, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition, the petitioners have assailed an order dated 15th February, 2007 passed by learned Civil Judge whereby an application under Order VII Rule 11 CPC made by the petitioner was dismissed.

2. It is argued by learned counsel for the petitioners that the respondent No.1, who was plaintiff before the trial court had made false averments in the subject suit. There was another suit filed between the parties wherein the respondent No.1 was defendant and the stand taken by the respondent in that suit as defendant was contradictory to the stand taken by the respondent in the present suit where respondent No.1 is plaintiff. Learned counsel for the petitioners presented to the court a chart of the pleadings of respondent

No.1 in two cases in order to show that the stand taken by the respondent in two cases was contradictory and contrary to each other and the suit, out of which this petition has arisen, filed by the respondent was a false suit. The petitioners submitted that the court should do a meaningful reading of the pleadings and if the court finds that respondent No.1 was out to misuse the judicial process and had filed a false suit, the court should nip this evil in the bud. She relied upon *T. Arivandandam Vs. T.V. Satyapal & Anr.*; AIR 1977 Supreme Court 2421 wherein the Supreme Court had observed that the civil court must do a meaningful and not formal reading of the plaint, and if it is found that it was a manifestly vexatious and meritless in disclosing a clear right to sue, the civil court should exercise its power under Order VII Rule 11 CPC to ensure that the purpose of Order VII Rule 11 CPC was fulfilled.

3. It is settled law that in order to consider the rejection of a suit under Order VII Rule 11 CPC, the court has to look into the contents of the plaint alone and cannot take into account the defence raised by the defendant. The court after a purposeful reading, as observed by the Supreme Court in *T. Arivandandam's* case (supra) should come to the conclusion that there was no cause of action disclosed in the plaint. There is no doubt that the court has to keep in mind that a clever drafting of the plaint might have been resorted by the plaintiff to create a cause of action when none existed. However, the court while considering the maintainability of the plaint has to presume that the facts stated by the plaintiff were correct and then see if the cause of action was there or not. The court cannot reject the plaint taking into account defendant's version that facts were stated falsely. It is not that the court is powerless and cannot dismiss the suit on the ground of concealment of facts or not coming to the court with clean hands but that dismissal of suit cannot be under Order VII Rule 11 CPC. Under Order VII Rule 11

CPC, the court has to reject the plaint if the conditions as mentioned in this order are satisfied, that is, either the suit is barred by some law or the suit does not disclose cause of action.

4. I, therefore, consider that at the stage of Order VII Rule 11 CPC, the court could not have taken into account the defence raised by the defendant regarding falsity of the pleas in the plaint and the civil court, therefore, rightly dismissed the application under Order VII Rule 11 CPC. The plea of falsity can be raised by the petitioner in its written statement and after pleadings are complete and stage is of framing issues, the defendant can press for framing an issue regarding non-maintainability of the suit on the ground of concealment of facts or stating false facts. However, at the stage of Order VII Rule 11 CPC, these pleas cannot be raised. I find no merits in the petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

FEBRUARY 11, 2010
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