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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 518/2011

Decided on 7th February, 2013

MAC ASSOCIATES

..... Appellant

Through :Mr. J.P. Sengh, Sr.
Advocate with Mohd. Anis
Rehman, Mr. Sumeet Batra
and Ms. Ankita Gupta,
Advs.

Versus

SP SINGH CHANDEL & ANR. Respondents

Through :Mr. Shekhar Nanavaty,
Adv. for respondent no. 1
Mr. Vikrant Mittal, Adv. for
respondent no. 2

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. Admit.
2. Arguments heard and trial court record perused.

3. By the order impugned in this appeal trial court has rejected the plaint under Order 7 Rule 11 of Code of Civil Procedure, 1908 (“Code”, for short).

4. Appellant filed a suit for possession and permanent injunction against the respondents. It was alleged in the plaint that respondent no. 2 was owner of the property admeasuring 100 square yards and bearing no. WZ 251-B, Western Portion, Street No. 1, Virender Nagar, New Delhi – 110058. Respondent no. 1 was sub-contractor (builder), who used to work for and on behalf of appellant on various construction projects on commission basis. In the month of May, 2006, respondent no. 2 approached the appellant with a proposal for redevelopment of the said property. It was agreed between them that the appellant would raise new construction after demolishing the old structure at its own expenses. The construction would be carried out in accordance with the sanctioned site plan and would be completed within six months from the date of handing over of the site by respondent no. 2. After completion of construction, respondent no. 2 would become absolute owner of the ground and second floors with roof

rights; whereas appellant would be owner of first floor (for short hereinafter referred to as “suit property”) with common passage and staircase. Respondent no. 2 agreed to execute the Sale Deed of first floor in favour of appellant after completion of construction. Appellant paid a sum of ₹1 lac to respondent no. 2, vide cheque bearing no. 025404 dated 23rd May, 2006 drawn on Vijaya Bank, New Delhi. Terms and Conditions, as agreed between the appellant and respondent no. 2, were incorporated in the Collaboration Agreement dated 23rd May, 2006, which was executed by respondent no. 1 for and on behalf of the appellant. From the funds made available by the appellant, respondent no. 1 completed the construction in the month of December, 2008. However, respondent no. 2 neither handed over possession nor executed Sale Deed in favour of appellant in respect of the suit property. Instead respondents filed a collusive suit for permanent and mandatory injunction in the trial court. Said suit was filed by the respondent no. 1 against respondent no. 2. It was alleged that the respondents had breached the terms and conditions of the agreement and understanding between the parties, thus, were

jointly and severally liable to handover possession to the appellant.

5. In the written statement, respondent no. 1 alleged that Collaboration Agreement dated 23rd May, 2006 was executed between respondent no. 1 and respondent no. 2 and appellant had nothing to do with the same. Appellant was not a party to the Agreement. No cause of action had arisen in favour of appellant for filing the suit, thus, the same was liable to be dismissed under Order 7 Rule 11 of the Code. There was no privity of contract between the appellant and respondents. Respondent no. 1 was an uneducated person. He was a builder. He had undertaken certain works for appellant in the past and certain amounts were due from the appellant, thus, the cheque of ₹1 lac was taken from the appellant by him favouring respondent no. 2. Appellant had fabricated certain blank vouchers signed by respondent no. 1 in good faith, which were misused. Respondent no. 1 denied that he was 'sub-contractor' of the appellant in respect of the work done in the property in question. Respondent no. 1 alleged that respondent no. 2 did not handover first floor to him after completion of construction, instead she threatened to sell it off to someone else,

thus, respondent no. 1 was forced to file a suit for injunction against the respondent no. 2.

6. Respondent no. 2 also alleged in her written statement that there was no privity of contract between her and the appellant. Appellant was not a party to the Collaboration Agreement dated 23rd May, 2006 entered into between her and respondent no. 1. She did not meet appellant at any stage. In terms of the Collaboration Agreement, first floor without roof rights was to be transferred by her in favour of respondent no. 1. She was not liable to transfer the property to an unknown person.

7. Law relating to rejection of plaint under Order 7 Rule 11 of the Code is well settled. The trial court can exercise the power under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. Order 7 Rule 11 of the Code, inter alia, mandates rejection of plaint when it does not disclose a cause of action. An application under this provision is to be decided entirely on a perusal of plaint and documents filed along with it. Defence of the defendant is not relevant for the

purpose of Order 7 Rule 11 of the Code nor can it be looked into. The court has to peruse the plaint as a whole to find out whether it discloses a cause of action or not. If the plaint discloses cause of action it cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Whether the plaint discloses cause of action is a question of fact which has to be gathered on the basis of averments made in the plaint and taking those averments to be correct as a whole together with the documents filed along with the plaint. If the case is based on documents the same have also to be read along with the averments made in the plaint to find out if there is any cause of action for filing the suit.

8. In *M/s. Texem Engineering vs. M/s. Texcomash Export*, 179 (2011) Delhi Law Times 963, a Division Bench of this Court has held, thus, “There can be no gainsaying that an application under Order VII Rule 11 of the CPC for rejection of the plaint has to be decided entirely on a perusal of the plaint and documents filed along with it. If authorities are required for this proposition, we need not travel beyond the latest exposition of the law contained in *Liverpool & London S.P.& I Association Ltd. vs. M.V. Sea*

Success I, (2004) 9 SCC 512. More recently, in *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100 it has yet again been clarified that the Court cannot reject a plaint under Order VII Rule 11 of the CPC on the basis of the allegations made in the Written Statement. In other words, the defence to the suit is not relevant for the purposes of Order VII Rule 11 of the CPC”.

9. Learned Senior Counsel for the appellant has vehemently contended that except the averments made in the plaint nothing else can be looked into. Even the documents filed along with the plaint cannot be considered for deciding the application under Order 7 Rule 11 of the Code. He has placed reliance on *Inspiration Clothes & U vs. C.I. Ltd.* 88 (2000) Delhi Law Times 769 (DB). I have perused the judgment and I do not find any such proposition of law having been laid down by this judgment. On the contrary, it has been held that the documents accompanying plaint can be looked into. In para 10 of the judgment, it has been held thus, “To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and documents

accompanying the plaint only and nothing else. The Court, however, cannot look at the defence of the defendant or the documents relied upon by the defendant.” Reliance has been placed by the Division Bench on D. Ramchandran vs. R.V. Janakiraman and Ors. (1999) 3 SCC 267 for taking such a view.

10. In the backdrop of above settled legal position, if the averments made in the plaint coupled with the documents filed in support thereof are considered, I do not find any locus standi in favour of the appellant to institute a suit for possession, inasmuch as, no cause of action has arisen in its favour for seeking possession of the suit property. During the course of hearing, learned Senior Counsel for the appellant has vehemently contended that respondent no. 1 was an agent of appellant and had entered into the Collaboration Agreement with the respondent no. 2, in the capacity of agent of the appellant, thus, the suit premises fell in share of appellant after the construction was complete and respondent no. 2 was under legal obligation to execute the Sale Deed and handover the possession thereof to appellant. However, a perusal of the Collaboration Agreement and other documents

placed on record of the trial court by the appellant do not indicate that the respondent no. 1 was agent of appellant and that he had entered into the Collaboration Agreement with respondent no. 2 as an agent of appellant. Alleged financial dealings between the appellant and respondent no. 1 dehors the agreement are not sufficient to indicate that respondent no. 1 was agent of appellant in respect of the Collaboration Agreement. Collaboration Agreement has been executed between the respondent no. 1 and respondent no. 2 on 23rd May, 2006. There is no whisper in the said Agreement that same was being entered into by respondent no. 1 as agent of appellant nor is there any mention of appellant in the Agreement.

11. Clause 16 of the Collaboration Agreement reads as under:-

“16. That after completion of Construct of the Building, the First Party will be the absolute owner of Ground Floor and Second Floor with roof right and the Second Party will become the owner of the First Floor without roof right with common passage and stair and the First Party will execute documents in favour of Second Party in respect of First Floor without roof rights.”

12. In terms of Clause 16 of the Collaboration Agreement, first floor without roof right with common passage and staircase was to fall in the share of respondent no. 1 and respondent no. 2 was to execute the documents in favour of respondent no. 1. Appellant has no cause of action in its favour to seek possession of the first floor from respondent no. 2. Thus, the view taken by trial court that respondent no. 2 did not owe any liability to handover the possession of the first floor and appellant had no locus standi to sue, inasmuch as, same was without any cause of action, does not suffer from any illegality, infirmity or perversity.

13. If the matter is viewed from another angle then also suit for possession on the basis of Collaboration Agreement, which at best can be taken at par with the Agreement to Sell, is not maintainable even if, for the sake of arguments, it is accepted that the respondent was agent of appellant. Agreement to Sell does not vest any right in favour of a person to the possession of property. Even if a person is put in possession of property through an Agreement to Sell, he cannot protect his possession on the pretext of part

performance under Section 53-A of the Transfer of Property Act, 1882 unless such an agreement is a registered document. Section 17 (1A) of the Registration Act, 1908, which has come into force with effect from 24th September, 2001, reads as under:-

Documents containing contracts to transfer for consideration, any immoveable property for purpose of Section 53-A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, they shall have no effect for the purpose of the said Section 53-A.

Once a person cannot even protect the possession, which he is holding, in absence of an unregistered Agreement to Sell, then how such a person can seek possession on the basis of such a document. In Sunil Kapoor v/s Himmat Singh & Ors. 167 (2010) Delhi Law Times 806, a Single Judge of this Court has held thus “a mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to

occupy that property as an agreement purchaser. This Court in *Jiwan Das v/s Narain Das*, AIR 1981 Delhi 291 has held that in fact no right inure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed.”

14. A suit which is without any cause of action, inasmuch as, is frivolous, vexatious and meritless has to be thrown out at the nascent stage since its continuance will not only burden the already overburdened judicial infrastructure but will also result in harassment of the opposite party which has to face rigmarole of full trial. Accordingly, I am of the view that appellant had no legal right to seek possession of the suit property on the basis of Collaboration Agreement. Suit is, thus, without any cause of action. In *T. Arivanandam vs. T. Satyapal*, AIR 1977 SC 2421, Supreme Court held thus, “if on a meaningful – not formal reading of the plaint it is manifestly found to be vexatious and meritless, in the sense of not disclosing a right to sue, the judge should exercise his power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. Supreme Court has

reiterated the same principle in I.T.C. Ltd. vs. Debts Recovery Appellate Tribunal, AIR 1998 SC 634, in the following terms:-

“Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with the view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions are not permitted in law and a clear right to sue should be shown in the plaint.”

15. For the foregoing reasons, appeal is dismissed being devoid of merits.

A.K. PATHAK, J.

FEBRUARY 07, 2013
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