

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

+ C.R.P. 4/2014 & C.M.No.1022/2014 (for stay)

% **JULY 23, 2014**

SH INDER MOHAN ARORAPetitioner

Through: Mr.Prashant Shukla with Mr.Santosh
Kumar, Advocates.

VERSUS

SH PAWAN KUMAR JAIN Respondent

Through: Mr.A.K.Mishra and Mr.W.A.Khan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition under Section 115 of Code of Civil Procedure, 1908 (CPC) impugns the order dated 13.9.2013 by which the trial court rejected the application under Order 7 Rule 11 CPC filed by the petitioner/plaintiff.

2. The subject suit is a suit for recovery of double the amount of price paid because as per the respondent/plaintiff/purchaser, the petitioner/defendant had committed a breach of contract/agreement to sell

dated 21.11.2011 for selling property bearing no.IX/2124, Gali No.7-8, Kailash Nagar, Delhi-31.

3. It was firstly argued by the petitioner in the application under Order 7 Rule 11 CPC that the court below had no pecuniary jurisdiction because pecuniary jurisdiction should be as per the value of the agreement to sell. This contention has been rightly rejected by the court below because the suit is not a suit for specific performance but is only for recovery of monies and the figure of the amount claimed will be the value for pecuniary jurisdiction. Therefore, since what is the amount which is claimed in the plaint will determine the pecuniary jurisdiction, hence the suit is correctly valued.

4. So far as the aspect of merits of the matter is concerned, the court below has noted that the merits of matter is an issue of trial, and since contents of the plaint in an application under Order 7 Rule 11 CPC have to be taken as correct and the defence of the defendant cannot be seen, the application under Order 7 Rule 11 CPC does not lie because the facts which are urged in support of the application under Order 7 Rule 11 CPC by the petitioner/defendant are the facts as per the written statement alleging breach

on the part of the respondent/plaintiff, and which aspects are disputed questions of fact not falling within the purview of Order 7 Rule 11 CPC.

5. In view of the above, there is no merit in the petition, and therefore the same is dismissed, leaving parties to bear their own costs.

VALMIKI J. MEHTA, J.

JULY 23, 2014
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