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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 193/2015 & CM APPL.31958/2015

Decided on: 21st December, 2015

SHRI BRAJESHWAR SEN Petitioner
Through: Ms. Ritika Mitra, Advocate

Versus

SHRI J.C. DEB & ANR. Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 30.09.2015 by virtue of which the learned Additional District Judge-03, South East, Saket Courts, New Delhi dismissed the application of the petitioner under Order 7 Rule 11 read with Order 1 Rule 10, sub-rule (2) of the Code of Civil Procedure, 1908.
2. I have heard the learned counsel for the petitioner and have also gone through the record.

3. This is a case where a suit was filed by respondent No.1 against the petitioner and respondent No.2 for recovery of money. The allegations which were made in the plaint were that the defendants i.e. the petitioner and respondent No.2 had extorted money to the tune of Rs.25 lacs in different proportions from plaintiff/respondent No.1. Accordingly, a suit was filed for recovery of the aforesaid amount by respondent No.1.
4. The present petitioner/defendant No.2 in the suit filed an application under Order 7 Rule 11 read with Order 1 Rule 10 (2) CPC contending that there was no cause of action in filing the suit for recovery against him and moreover his name may be deleted from the array of defendants. The reason given by the petitioner was that as there were allegations of extortion made by the respondent/plaintiff, therefore it was a case of a criminal offence and not a case for recovery. It was contended that since no criminal case has been lodged and only the present suit for recovery has been filed, it becomes without any cause of action.

5. The learned trial Judge rejected this plea of the petitioner that there is no cause of action or there is a ground for deleting his name from the array of defendants.
6. I do not find any illegality, impropriety or jurisdictional error in rejecting the application. This is on account of the fact that the same factual matrix can result in commission of criminal offence as well as filing of a civil remedy. No doubt in the instant case the respondent had filed a suit for recovery of money alleging that the money was extorted from him does not mean that the suit for recovery would not lie and only an action for criminal offence would lie. Moreover, it cannot be said to be a case without any cause of action. Cause of action clause has been mentioned in the plaint. The distinction has to be drawn in a case where there is cause of action for filing a suit and a case where there is no occasion for cause of action. This is not a case where it can be said to be that there was no occasion for cause of action for filing the suit for recovery. Moreover, there are averments to that effect in the plaint itself and while deciding an application under Order 7

Rule 11 CPC only the averments made in the plaint are to be considered.

7. For the aforesaid reason, I feel that the present petition of the petitioner is totally misconceived and the same is accordingly dismissed.
8. The learned trial Court was absolutely right in rejecting the application of the petitioner filed under Order 7 Rule 11 as well as under Order 1 Rule 10 (2) CPC.
9. Pending application also stands disposed of.

V.K. SHALI, J.

DECEMBER 21, 2015

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