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

+ C.R.P. 46/2016 & C.M. Nos.11861-62/2016

BABU LAL MISHRA & ORS

..... Petitioners

Through Mr.S.P.Jha and Mr.Vikrant Bhardwaj,
Advocates.

versus

PASSANGI PUR GAON AWAM MANDIR WELFARE
ASSOCIATION (REGD)

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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01.04.2016

The petitioners who are defendants No. 1 & 2 in the Trial Court are aggrieved by the order dated 13.01.2016 vide which the application filed by them under Section under Order 7 Rule 11 of the CPC had been dismissed.

Record shows that the plaintiff had filed the present suit against the three defendants. This was a suit for declaration, possession and permanent injunction. The contention of the plaintiff was that he is the duly registered society. The members of the society were looking after the affairs of the temple and dharamshala. For the purpose of performing ritual activities and puja at Shri Shyam Mandir, the members of the society had employed defendant No. 2 as priest and authorized him to use the donations received in the temple for the personal use as remuneration. He was provided one room accommodation in the temple. Defendant No. 2 is the native of village

Possangi Pur who has the malafide intention to grab the property of Shri Shyam Mandir. They had both started creating a nuisance in the functioning of the temple and had attempted to grab the property of the temple. Para 12 contains the cause of action. The prayer made in the suit is for a decree of possession qua the room which had been given to defendant No. 1 as also permanent injunction qua both defendants No. 1 & 2 for restraining them from grabbing property of the temple.

Written statement was filed. In the course of the proceedings, an application under Order 7 Rule 11 of the CPC came to be filed by the defendants/applicants. Contention was that no cause of action has been disclosed in the plaint.

The Trial Court had noted the law on an application to be decided under Order 7 Rule 11 of the CPC in the correct perspective. It is only the averments which are made in the plaint which have to be adhered to and not the defence sought to be raised by the defendant. The contention of the applicants/defendants in the Trial Court was that the plaintiff does not have the locus-standi to file the present suit and the property in question falls in a land of which one Kirorimal was the recorded owner. It was further stated that defendant No. 1 had been appointed as pujari by defendant No. 2 and later on by the trust of the temple. Defendant No. 2 is in fact a trustee of the temple. Further submission was that the resolution dated 23.08.2007 relied upon by the plaintiff was sham for the reason that one Daya Kishan had already expired prior to the date of the said resolution. These facts as elicited and noted supra are admittedly defences which are sought to be raised by the defendants and cannot be considered at the time of dealing with

an application under Order 7 Rule 11 of the CPC. For this, trial is required and cannot be gone into at this stage.

Rejection of the plaint is not called for if the averments contained in the plaint disclose a cause of action and the question now sought to be raise i.e. whether defendant No. 1 was appointed by defendant No. 2 or whether the resolution relied upon by the plaintiff was bogus/sham cannot be considered at this stage. Impugned order suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

APRIL 01, 2016

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