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

+ C.R.P. 66/2016 & CM No.16329/2016 (stay)

SARABJIT SANDHU

..... Petitioner

Through: Ms. Anisha Banerji & Ms. M.
Chatterjee, Advocates.

versus

SHAURYA SHANDILYA

..... Respondent

Through: Mr. N. Prabhakar & Mr. Dhruv
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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27.09.2016

1. By the present petition, the petitioner seeks to impugn the order dated 09.02.2016. The trial court had framed a preliminary issue, which is as follows:

“Whether the suit is barred under Order 7 Rule 11 CPC for want of cause of action ? OPD”

2. The trial court vide impugned order decided the issue in favour of the respondent and against the petitioner.

3. The respondent has filed the present suit for recovery of Rs.1,20,000/- against the petitioner/his mother-in-law. It is stated in the plaint that after marriage of the respondent with the daughter of the petitioner in 2007 a joint account in ICICI Bank, Greater Kailash, Part-I was opened. Thereafter, as per plaint, the wife of the respondent Ms. Amanpreet Sandhu left the matrimonial home. It is admitted that disputes are pending and litigation is going on regarding dissolution of marriage. It is further stated in the plaint

that on 30.07.2013, the respondent at the request of the petitioner gave a loan of Rs.1,20,000/- by way of cheque No.1306 dated 30.07.2013 from the said bank account. Hence, the present suit is filed to recover the loan amount.

4. Learned counsel for the petitioner has submitted that the plaint is liable to be rejected under Order 7 Rule 11 CPC as the respondent deliberately did not give full particulars and did not place on record the fact as to who signed the cheque in question for Rs.1,20,000/-. It is pointed out that the cheque was actually signed by the daughter of the petitioner. Reliance is placed on the orders dated 07.09.2015 and 19.11.2015 of the trial court to point out that despite directions by the court, the respondent has failed to give information regarding signatory of the cheque in question.

5. A perusal of the impugned order shows that the trial court has relied upon the judgment of the Supreme Court, titled as *ABC Laminart Pvt. Ltd. vs. AP Agencies, 1989 (2) SCC 163* to conclude that the plaint disclose cause of action and answered the issue accordingly.

6. The Order 7 Rue 11 CPC reads as follows:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

Hence, Order 7 Rule-11 CPC provides that a plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

7. A perusal of plaint shows that it cannot be said that it does not disclose any cause of action. It states that the loan has been given to the petitioner by way of cheque which she has failed to return.

8. The petitioner’s stand is that the cheque is given by her daughter and it is no loan. The petitioner actually wants the court to look into her defence as contained in the written statement to conclude that the plaint does not disclose cause of action. This is not permissible in law when dealing with an application under Order 7 Rule 11 CPC.

9. In view of above, the present petition is without merits and is accordingly dismissed.

JAYANT NATH, J.

SEPTEMBER 27, 2016/v