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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(OS)(COMM) 1/2017**
PURSHOTTAM SINGHAL Appellant
Through : Sh. Alok Kumar, Sh. Neeraj Kumar
Gupta and Sh. Abhishek Paruthi, Advocates.

versus

CHITRA GUPTA & ANR Respondents
Through : Sh. Vedit Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER
26.04.2017

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1. The objection as to the delay in condonation on the basis that the condonation of delay application was not disposed of, but that the delay in refiling alone was condoned, is absolutely unfounded; since the defendants/respondents insisted on urging this, the Court had to consider the matter afresh. In the circumstances, the objection is overruled.

2. Issue notice. Sh. Vedit Gupta, Advocate accepts notice. With consent of learned counsel for the parties, the appeal was heard.

3. The plaintiff is in appeal aggrieved by an order of the learned Single Judge rejecting his plaint on the ground that the suit for recovery of ₹1.7 crores with interest and costs was not maintainable. The defendants moved an application under Order VII Rule 11 CPC, contending that the suit did not facially disclose a cause of action

inasmuch as the documents filed along with it were contrary to the pleadings. The plaintiff was described as a sole proprietorship concern and had sued for the recovery of fee – quantified at ₹1.7 crores together with interest. In support of the suit, the plaintiff had filed documents, including an agreement entered into with M/s. Shubham Nirman signed by Sh. Purshottam Singhal, the plaintiff. In addition, the suit had relied upon a legal notice issued under instructions of the said plaintiff. At the same time, the suit had also produced a copy of the final bill in which Sh. Purshottam Singhal had described himself as a partner of M/s. Shubham Nirman. This became the basis for the rejection of the plaint; learned Single Judge observed as follows:

“6. Although numerous documents have been filed with the plaint, there is only one document which is in the form of a final bill raised on the Defendant, which is dated 20th November, 2012, which is signed for Shubham Nirman (Partner) and which purportedly carries the signature of the Plaintiff. It is, therefore, for the Plaintiff to show on what basis he claims to be a proprietary concern.

7. The decision in B.B. Patel v. M/s. Nexim Exports Pvt. Ltd. (supra) is of no assistance to the Plaintiff. The facts of the case were that the sole proprietary concern was subsequently converted into a partnership firm and the suit was then filed for recovery by the Plaintiff in his individual capacity. Para 1 of the plaint in the present case clearly states that the Plaintiff is a proprietary concern. In fact, even in the cause title of the plaint, the name of the Plaintiff is shown as under:

*“Shri Purshottam Singhal
Working under the name and style of
M/s Shubham Nirman, as its sole proprietor
S/o Shri Mahavir Singhal
R/o 34, Anekant Apartment,
Vasundhara Enclave,
Delhi 110096”*

8. The Court is, therefore, satisfied that the Plaintiff has failed to make out a case to show that a cause of action arises qua the Defendants vis-a-vis the Plaintiff as a proprietary concern, thus, enabling the Plaintiff to maintain the suit as such.”

4. Learned counsel for the defendants/respondents urged that the impugned order is sustainable because there is no indication anywhere, either in the suit or the documents preferred that Sh. Purshottam Singhal was indeed the proprietor and not a partner of M/s. Shubham Nirman. It was submitted, besides, that the issue of limitation had also been urged in the application under Order VII Rule 11 CPC.

5. This Court is of the opinion that the impugned order is untenable. It is well-settled that the plaint alone or part thereof should not be considered while adjudging its maintainability in the context of challenge under Order VII Rule 11 CPC. On the contrary, whilst it is a fact that the documents produced along with the plaint are to be treated as part of the pleadings, nevertheless overemphasis on any one alone would do injustice as that would result in depriving plaintiff the opportunity of contradicting the document in question. The same consideration weighed with the Court in adjudging whether the suit

has to be decreed on admission under Order XII Rule 6 CPC on the basis of the materials on record – a power that can be resorted to, to dismiss a suit.

6. In the present case, the pleadings in the suit are to be treated as the truth in the absence of any written statement. If, on an overall reading of the suit, i.e. plaint and the entirety of documents, it is discernible that it is not maintainable, clearly then alone can the power under Order VII Rule 11 CPC be resorted to. This Court is of the opinion that such a conclusion could not have been drawn in the facts of the case given the nature of other documents. The overemphasis on the final bill was, therefore, misplaced. In view of the above findings, the impugned order is set aside. The suit is restored to the file of the learned Single Judge. Since the matter is remitted for consideration on the merits, the plaintiff/appellant would be entitled to refund of Court Fees. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 26, 2017/ajk