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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 08th March, 2018

\+ CM (M) 932/2017 & CM No. 31212/2017 (stay)

KULSHRESHTHRA DHINGRA ..... Petitioner

Through: Mr. Biju Shankar, Adv. with petitioner in person.

versus

DEEPA DHINGRA ..... Respondent

Through: Mr. Prasoon Kumar & Mr. Kshitij Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner herein is defendant in the Civil suit (CS No. 7945/2016) instituted by the respondent (the plaintiff), it having been amended and presently pending on the file of Additional District Judge (South East) for reliefs in the nature of declaration of the plaintiff to be the owner of the subject property it having been described as shop No. 101, First floor in CSC at Chittranjan Park, Market No.II, New Delhi, recovery of possession thereof and cancellation of agreement to sell dated 21.11.2006 registered with Sub Registrar besides permanent injunction against its sale, alienation, dispossession or creation of third party interest and damages @ Rs. 25,000/- per month.

2. The plaintiff and the defendant (the petitioner) are sister and brother to each other. It is noted that the plaintiff's case is that both parties had opened a joint bank account in ING Vyasa Bank, Panchsheel Park Branch, New Delhi on 25.07.2006 from which the defendant had made an unauthorized withdrawal of Rs. 9,00,000/-, he having availed the said amount to purchase the afore-mentioned property in his name. It appears from the plaint that though the factum of acquisition of the property came to the knowledge of the plaintiff in December, 2012, the fact that the defendant had made an unauthorized withdrawal of money from the joint account to indulge in such transaction came to the knowledge of the plaintiff only in last week of December, 2014 when statement of account of the said bank came in her hands.

3. The defendant (the petitioner) had moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) before the trial court seeking rejection of the plaint on the ground that it did not disclose any cause of action. The said application was dismissed by the Additional District Judge by order dated 28.04.2017 which is sought to be impugned by the petition at hand.

4. Having heard both sides and having gone through the record, this Court finds the prayer for rejection of the plaint to be not correct. It may be that there is not sufficient articulation of the grounds on which some of the reliefs claimed are being pursued by the plaintiff. But then, it is not correct to contend that the plaint does not disclose any cause of action for any relief. It is clearly set out in the plaint that

the account from which amount of Rs. 9,00,000/- was withdrawn by the defendant on 05.09.2006 was a joint account, the credit balance wherein would be the joint property of both parties. The fact that the afore-mentioned property was purchased by a document executed and registered on 21.11.2006, on the close heels of the said withdrawal does seem to indicate that the money withdrawn from the joint account may have been utilized for the transaction by the defendant. Noticeably, the plaintiff also prays for damages and has further made a general prayer that the Court may grant any other order as it may deem fit and proper which prayer clauses, in the given facts and circumstances, cannot be short-shrifted. The argument that the case if considered for recovery of money is time-barred was not even pressed before the trial court as a ground for rejection of the plaint. Such ground raised at this stage in these proceedings before this Court cannot be accepted, also for the reason that it would be a mixed question of fact and law in that the plaintiff's averment is that the factum of unauthorized withdrawal of money came to her knowledge only in last week of December, 2014, the suit having been filed in January, 2015.

5. There is no case made out for rejection of the plaint. The petition and the application filed therewith are dismissed with costs of Rs. 10,000/-.

R.K.GAUBA, J.

MARCH 08, 2018
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