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

% Judgment delivered on: 03.12.2019
+ C.R.P. 278/2019

RAJDEEP JAIN & ANR Petitioners

versus

SHARP AIR SYSTEMS PVT LTD & ANR Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Raghav Sharma, Advocate

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 51958/2019 (Exemption)

Allowed, subject to all just exceptions.

C.R.P. 278/2019

1. Petitioners impugn order dated 03.07.2019 whereby the application of the petitioners under Order VII Rule 11 (a) of the CPC has been dismissed.

2. It is contended by learned counsel for the petitioners that plaint does not disclose a cause of action qua the petitioners who were

defendants no. 1 and 2 in the Suit and the trial court dismissed the application by applying the ratio of the judgment of the Supreme Court in *Madhav Prasad Aggarwal & Anr. v. Axis Bank Ltd. & Anr.*, (2019) 7 SCC 158 wherein it has been held that plaint cannot be rejected in part and can be rejected as wholly.

3. Learned counsel further relied on the judgment of Supreme Court '*Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust*' (2012) 8 SCC 706, wherein the Supreme Court has held that where one of the defendants seek rejection of a plaint as a whole qua the said defendants as the plaint fails to disclose any cause of action, the plaint can be rejected qua that particular defendant.

4. The contentions of the learned counsel for the petitioner is not sustainable, in as much as, the plaint if read does disclose a cause of action against the petitioners.

5. The question of applicability of the judgments in the cases of *Madhav Prasad Aggarwal (supra)* or *Church of Christ Charitable Trust & Educational Charitable Society (supra)* would arise if no cause of action is disclosed against the petitioners.

6. In my view, the Plaint discloses a cause of action against the petitioners. Subject suit was filed by the petitioners contending that respondent is an authorized dealer of Daikin Air-conditioners and petitioners were in urgent need of air-conditioners of Daikin Company

and therefore on 28.06.2017 made a phone call to the office of the respondent no. 1 and 2 demanding 12 brand new Daikin air-conditioners to be installed at their residence at Safdarjung Enclave.

7. On 29.06.2017, petitioners sent a person who was proprietor of defendant no. 3 (respondent no. 2 herein) and requested respondent no. 1 to deliver 12 brand new air-conditioners of Daikin company. The air-conditioners were to be delivered to the residence of the petitioners. Defendant no. 3 (respondent no. 2) delivered two cheques to respondent no. 1 which cheques were dishonoured on presentation.

8. It is the case of the respondent that the dishonour of cheques was informed to respondent no. 3 who sent a message saying that an RTGS payment has been made and subsequently it transpired that RTGS messages were fake. It is further averred in the plaint that when repeated efforts were made to recover the payment and no payment was received, Respondent no. 1 (plaintiff) visited the residence of the petitioners and requested them to make the payment and they then stated that they required 2 to 4 days' time to make the payment and assured that there will be no further default in making the payment, however, no payment was made.

9. Thereafter on 27.07.2017, an attempt was made by respondent no. 1 to uninstall the air-conditions from the residence of the petitioners but they did not permit the same and called the police. Accordingly, the subject suit was filed.

10. Learned counsel for the petitioner contends that there is no recorded transaction between the petitioners and respondent no. 1 and there is no contractual obligation of petitioners qua respondent no. 1 and further that the claim of respondent no. 1 is based on an invoice which is neither addressed to petitioners nor acknowledged by the petitioners.

11. Learned counsel for the petitioner submits that the defence of the petitioners as stated in the written statement is that the petitioners had an independent transaction with respondent no. 2 who in turn had an independent transaction with respondent no. 1 and 2 and petitioners had already made the payment of the contractual obligation qua respondent no. 2 towards the purchase of air-conditioners and petitioners have no obligation to the respondent no. 1 and 2.

12. It is settled position of law that while considering the application under Order VII Rule 11 CPC, the plaint has to be read with a demur and the defence of the defendant in the Written Statement is not to be considered.

13. As noticed above, bare reading of the plaint discloses a cause of action against the petitioners herein. The claim of the respondent no. 1 in the Suit as also the defence of the petitioners would be tested at trial.

14. On perusal of the plaint, it cannot be said that the plaint does not disclose a cause of action qua the petitioners.

15. In view of the above, I am of the view that the impugned order dated 03.07.2019 rejecting the application of the petitioners; though on different ground, does not warrant any interference.

16. I find no merit in the petition. The petition is accordingly dismissed.

CM APPL. 51959/2019 (condonation of delay)

Since revision petition of the petitioners has been considered on merits and dismissed as having no merit. The application seeking condonation of delay is allowed.

DECEMBER 03, 2019
‘rs’

SANJEEV SACHDEVA, J