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

Decided on: 31st July, 2019

+ CM(M) 1126/2019

JAY KANT MISHRA

..... Petitioners

Through: Mr. Sarvajeet Kumar Thakur,
Advocate.

versus

M/S S CHAND & CO LTD & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 34286/2019(*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 1126/2019

1. The challenge in this petition is to an order dated 22.05.2019 passed by the Additional District Judge-12 (Central), Tis Hazari Courts, Delhi in CS/DJ No. 1446/2017 whereby the Trial Court has held that the suit instituted by the petitioner herein is barred by the principle of *res-judicata* in terms of Section 11 of the Code of Civil Procedure, 1908 (hereinafter, "the CPC").
2. The suit filed by the petitioner was for declaration, possession and mandatory and permanent injunction in respect of the first floor of the

Property no. 19-A, Radha Madhav Mandir, Ansari Road, Darya Ganj, New Delhi. One of the claims made in the suit was for a declaration that an eviction order dated 19.11.2011 passed by the Additional Rent Controller, Delhi in Eviction Petition No. E-68/09 is illegal, unconstitutional and not binding upon the parties.

3. In the suit, issues were framed, and two issues were decided as preliminary issues by the impugned order. Those two issues are as follows:-

“1. Whether the suit is not maintainable as barred by the principal of res-judicata in view of eviction order dated 19.11.2011 passed by the court of Sh.Pritam Singh, the then Ld.ARC in petition No.E-68/09, titled as S.Chand & Co.Vs. Jay Kant Mishra which is upheld to the Hon’ble Supreme Court of India?OPD

2. Whether the suit of the plaintiff is barred by limitation?OPD”

4. The suit has been dismissed in view of the decision of the first preliminary issue in favour of the defendants in the suit [respondents in this petition].

5. It appears that the respondents had initially instituted two eviction petitions against the petitioner being E-12/2009 and E-68/2009. These were allowed by the order of the Additional Rent Controller, Delhi. The order of the Rent Controller was carried in appeal to the Rent Control Tribunal by the petitioner herein which was dismissed by an order dated 27.04.2012 insofar as the order of eviction under Section 14(1)(i) of the Delhi Rent Control Act, 1958 is concerned, but allowed insofar as the order of the eviction under Section 22 of the Act is concerned. The petitioner herein filed a petition under Article 227 of the Constitution [CM(M) 549/2012] against the said orders before this Hon’ble Court. This Court declined to interfere under Article 227 of the Constitution and the petitioner’s Special

Leave Petition before the Supreme Court [S.L.P.(C) No. 35423-35424/2013] was also unsuccessful. The order of the Additional Rent Controller, as affirmed by the order of the Rent Control Tribunal, thus attained finality.

6. The case of the petitioner in the suit thereafter instituted is that the said order was obtained by fraud. It is undisputed that this ground had been raised in the proceedings which arose out of the eviction proceedings including before this Court and the Supreme Court, but had not found favour. However, the petitioner relies upon a subsequent judgment dated 04.08.2016 passed by the Civil Judge-04(Central), Tis Hazari Courts, Delhi in CS. No. 229/2013. By the said judgment, the Civil Judge dismissed a suit filed by the respondents herein for permanent injunction and damages. The issues framed in that suit were as follows:-

- “1) Whether the plaintiff is entitled for a decree of permanent injunction as prayed in the plaint? OPP.*
- 2) Whether the plaintiff is entitled for recovery of damages of Rs. 1,90,000/- as prayed in the plaint? OPP.*
- 3) Whether the plaintiff is entitled to pendente lite and future damages @ Rs. 10,000 pm w.e.f 01.11.2004? OPP.*
- 4) Relief.”*

7. The Trial Court in that suit held that the respondents herein were not entitled to the decree of permanent injunction or damages. On the basis of the evidence placed before it, the Court came to the conclusion that the respondents herein had failed to establish due authority to institute the suit or of any witnesses to depose on behalf of the company. The Trial Court has also noted that the respondents had not brought on record the original sale deeds during the trial, nor examined any witness from the Registrar office to prove the certified copies of the sale deed. These findings are

relied upon by the petitioner in these proceedings to contend that the eviction orders were obtained by the respondents herein by way of fraud and cannot be relied upon to form the basis of an application under Section 11 of the CPC.

8. In the impugned order, the Trial Court has declined the relief claimed relying upon the judgments of the Supreme Court governing the exercise of jurisdiction under Section 11 of the CPC. The Trial Court has noticed that the eviction orders were carried to the Supreme Court and affirmed, and held that the present suit for a declaration to set aside that decree and judgment cannot be entertained merely on the basis of the judgment of the Civil Judge in the suit instituted by the respondent. The Additional Rent Controller having decided the status of the parties as landlords and tenant, the Court has accepted that the principles of *res judicata* will be applied in such an event.

9. Section 11 of the CPC provides as follows:-

“11. Res judicata.-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

10. The principle behind this doctrine has been noticed in *M.Nagabhushana vs. State of Karnataka* (2011) 3 SCC 408 which observes as follows:-

“12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium which means

that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties.”

11. As noticed by the Trial Court, conditions for application of this provision were explained by the Supreme Court in *Saroja vs. Chinnusamy (Dead) By Lrs. And Another* (2007) 8 SCC 329 thus:

“5. We have carefully examined the provisions under Section 11 CPC. After a careful reading of the provisions under Section 11 CPC, it is discernible that in order to constitute res judicata, the following conditions must be satisfied—

(i) There must be two suits—one former suit and the other subsequent suit;

(ii) *The court which decided the former suit must be competent to try the subsequent suit;*

(iii) *The matter directly and substantially in issue must be the same either actually or constructively in both the suits;*

(iv) *The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit;*

(v) *The parties to the suits or the parties under whom they or any of them claim must be the same in both the suits;*

(vi) *The parties in both the suits must have litigated under the same title.*

We shall come back to these conditions later.”

12. Each of the conditions laid down in *Saroja* (supra) have been examined by the Trial Court. The questions decided by the ARC in the eviction proceedings included *inter alia* that there was a relationship of landlord/tenant between the parties. The subsequent judgment of the Civil Judge dated 04.08.2016 is relied upon by the petitioner to urge that the respondents herein were not the owners of the property. Title to the property, *per se*, is not required to be proved in eviction proceedings. The question being urged by the petitioner therefore does not entitle it to the claims made in the present suit – of a declaration that the eviction order was illegal, or the consequent relief of possession, injunction etc.

13. In my view, therefore, the impugned order of the Trial Court does not call for interference under Article 227 of the Constitution. There is no lack of jurisdiction or perversity demonstrated in the order which warrants the interference of this Court. The findings of the Trial Court with regard to the principle of *res judicata* are in consonance with the authorities and the law laid down by the Supreme Court on this aspect. The petitioner’s contention

that the order of the Civil Judge in the suit filed by the petitioner establishes fraud on the part of the respondents in obtaining the order in the eviction proceedings is unsustainable and is rejected.

14. The petition is therefore dismissed.

PRATEEK JALAN, J.

JULY 31, 2019

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