$~1

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

\+ **CM(M) 49/2020 & CM APPLs. 2204/2020, 2205/2020, 2206/2020**

PREMILA SHARMA ..... Petitioner

Through: Mr. S.S. Panwar, Mr. Sunil Dutt Baloni, Advocates along with Petitioner in person (M-9312234919)

versus

DHARAM CHAND HANDA & ANR ..... Respondents

Through: Mr. Pradeep Kr. Saini, Advocate for R-1

CORAM:

JUSTICE PRATHIBA M. SINGH

O R D E R

% **30.01.2020**

1. The present petition challenges the impugned order dated 16th October, 2019 by which the application under Order IX Rule 7 CPC was rejected by the Trial Court.

2. A suit was filed by the Respondent No. 1/Plaintiff (*hereinafter, "Plaintiff"*) - Mr. Dharam Chand Handa against his brother, Defendant No. 1 - Mr. Kewal Kishan Handa and Defendant No. 2 - Mrs. Premila Sharma seeking rendition of accounts of the partnership firm, namely, M/s Handa Food Products. In the suit the Plaintiff also sought declaration/ cancellation of sale documents dated 5th April, 2004 by which Mr. K.K. Handa had transferred property bearing no. B-70/30, DSIIDC Commercial Complex, Lawrence Road, Delhi to Mrs. Premila Sharma.

3. Both the Defendants had filed their written statements. The Petitioner herein, who was Defendant No.2 in the suit (*hereinafter, "Defendant No. 2"*), had filed an application under Order VII Rule 11 in which, vide order dated 28th January, 2015, the plaint was ordered to be returned for lack of

jurisdiction under Order VII Rule 10 CPC. The remaining objections of Defendant No.2 were left open.

4. A second suit was filed after a period of one year. In the said suit, Defendant No.2 was proceeded *ex-parte* on 6th April, 2018. An application was moved by Defendant No.2 seeking setting aside of the *ex-parte* order under Order IX Rule 7 CPC, which was dismissed by the Trial Court vide the impugned order dated 16th October, 2019.

5. Ld. counsel for Defendant No.2 submits that the summons in the suit was never served upon the Defendant No. 2. It is further submitted that a detailed written statement has in fact been filed in the first suit and the order proceeding against the said Defendant *ex-parte* was itself completely contrary to law, as service was never effected upon Defendant No.2. Ld. counsel submits that since the summons were not served, knowledge was derived by Defendant No. 2 only when the Defendant No.1 informed the Defendant No.2 of the pendency of the second suit. Immediately, an application was moved under Order IX Rule 7 CPC on 29th August, 2019 which has been wrongly dismissed.

6. On the other hand, ld. counsel for the Plaintiff relies upon order dated 1st August, 2018 which specifically records that Defendant No.2 was present before the Court. Also, in one of the subsequent orders, the appearance of Defendant No.2 is recorded. He submits that Order IX Rule 7 CPC application is hopelessly barred by limitation and delay is more than one year. Thus, he submits that the application has been rightly rejected by the Trial Court.

7. The Court has perused the pleadings in the earlier round of litigation, the orders passed therein and also the orders passed in the present suit. The

Petition itself is writ with various anomalies as, in paragraphs 4 and 5, it is stated that the Petitioner came to know of the pendency of the suit on 29th July, 2018 and the application under Order IX Rule 7 was filed on 29th August, 2018. Ld. counsel submits that these are typographical errors in the petition. In any event, ld. counsel for the Plaintiff is right to the extent that in the order dated 1st August, 2018, the appearance of Defendant No.2 is recorded.

8. The pleadings in the previous round of litigation however show that Defendant No. 2 was serious about the defence which was taken by her. In fact, it was in view of the application under Order VII Rule 11 CPC filed by the Defendant No. 2 that the suit was rejected for want of pecuniary jurisdiction. The objections of the Defendant No.2 were left open even vide the said order dated 28th January, 2015. The said order is reproduced below:

> *"The arguments on the application under Order 7 rule 11 CPC on behalf of defendant no.2 have already been heard.*
> *The defendant has pleaded that the present suit is liable to be rejected as it does not disclose cause of action, the relief claimed is under valued and proper court fees has not been paid. It is also barred under the Law of Limitation and is hit by the provisions of Section 11 of CPC. It is also barred under the provisions of Arbitration and Conciliation Act as the matter in dispute is already pending before the Arbitrator.*
> *The plaintiff, on the other hand in his reply submitted that provisions of Order 7 rule 11 CPC does not apply in the present case. At this stage, only the documents of the plaintiff and the pleadings can be seen for deciding the maintainability. Proper valuation and court fees have been paid by them. The proceedings before the Arbitrator are different and does not affect the present*

case.

I have heard the parties and gone through the file.

The brief factual matrix of the. suit is that plaintiff entered into partnership with defendant no. 1 on 01.04.1998 for carrying but the business in the name and style of M/s. Handa Food Products at B-70/30, DSIDC Complex, Lawrence Road, Delhi. Earlier the said business was being carried out by three partners. The said industrial shed was allotted to defendant no. 1. The DSIDC allowed the defendant no.1 for carrying out the business of firm at the said industrial shed. The plaintiff due to some medical ailment remained bed ridden and after, some time visited the business premises. He found that the machinery of the firm has been sold out. The defendant no.1 refused to the request of settlement of account of the firm. Hence, he instituted the petition under Section 11 (5) along with application under Section 9 of Arbitration Act. The said petition was allowed vide order dt. 09.08.2004.

The defendant no. 1 in order to defeat his rights in the property of partnership firm sold the industrial shed to defendant no.2 on 05.04.2004 vide GPA etc. on consideration amount of Rs. 5,50,000/-. Though the DSIDC had offered to sell the said industrial Shed on total consideration amount of Rs. 20,04,659/- which was accepted by defendant. Thus the subsequent alleged transfer of the shed to defendant no. 2 at very low price is illegal and sham. It also violates the terms of allotment by DSIDC.

Thus he has filed the present suit for seeking rendition of accounts of' the partnership firm, declaration, cancellation of sale document dt. 05.04.2004, relief of possession of the industrial shed along with decree of permanent and mandatory injunction.

The defendant no. 2 in his application under Order 7 Rule 11 CPC has taken primarily the following four objections as to the maintainability of the present suit:-

a) The suit being barred under the Law of Limitation.

b) It being barred under the provisions of Arbitration and Conciliation Act.
c) Improper valuation and court fees
d) No cause of action being there in favour of plaintiff
The arguments were advanced mainly on the issue of valuation and court fees.
The plaintiff is seeking the relief of possession of the industrial shed situated as B-70/30, DSIDC Complex, Lawrence Road, Delhi. Thus, for the said relief the provisions of Section 7 (V) of Court Fees Act r/w/s 3 of Suit Valuation Act would apply in the present case. The plaintiff in para no. 12 of the plaint itself has impugned the transfer in favour of defendant no.2 for consideration amount of Rs. 5,50,000/-.
The plaintiffs themselves disputed the said consideration amount to be wholly inappropriate. The plaintiff has also placed reliance upon the offer-letter of DSIDC dt. 29.01.2004 whereby the consideration amount was stipulated to be Rs. 20,04,659/-. Thus, the plaintiff himself by accepting the said consideration amount to be the correct value of the said industrial plot for which the relief of possession has been sought, should have valued the relief of possession accordingly on the. said amount.
In view of the above said pleadings and the reliance placed upon the documents of the plaintiff himself the said amount of Rs. 20,04,659/- is taken as the amount for purposes of valuation and court fees.
The said valuation bars the present suit before this court on the ground of pecuniary jurisdiction. The plaint is accordingly returned under Order 7 rule 10 of CPC. The file be returned as per rules. <u>But, no opinion is expressed as to the remaining objections taken by the defendant no.1 in his application under Order 7 rule 11 CPC.</u>
The plaintiff is at liberty to move appropriate application in terms Of Order 7 rule 10 A of CPC by 20.02.2015."

9. This shows that the Defendant No.2 was diligent in the earlier round and for whatever reasons either due to non-service of summons or lack of proper information/advice, there was a delay in filing of the application under Order IX Rule 7 CPC. Considering the overall facts of the case and the fact that the Defendant No.2 claims to have purchased the property from one of the brothers i.e. Defendant No.1, the Defendant No.2 will be seriously prejudiced if the order proceeding Defendant No.2 *ex-parte* is not set aside. The application under Order IX Rule 7 CPC is accordingly allowed and the order proceeding the Defendant No.2 *ex-parte* is set aside, subject to payment of Rs.25,000/- as costs to the Plaintiff. The written statement shall be filed within a period of two weeks. The costs shall be paid on the day when the written statement is tendered before the Trial Court. If issues have not been framed, the same shall be framed and the evidence of the parties shall now be recorded after framing of issues. Considering that the suit has been delayed due to non-appearance of Defendant No.2 in the first stage, endeavour shall be made by the Trial Court to dispose of the suit expeditiously within a period of one year from today.

10. With these observations, the petition and all pending applications are disposed of. A copy of this order be sent to the ADJ – 04, Rohini Courts Delhi hearing C.S. No. 578155/2016 titled *Dharam Chand Handa v. Kewal Kishan Handa*.

Order *dasti.*

PRATHIBA M. SINGH, J

JANUARY 30, 2020
Rahul