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

Date of Decision: 6th November, 2020

+ **C.R.P. 70/2020 and CM APPL. 28122/2020, 28123/2020**

SHRI SANDEEP Petitioner

Through: Mr. Sandeep Hitendar, Advocate. (M:
8882826400).

versus

M/S DARSHAN ENTERPRISES & ORS. Respondents

Through: Ms. Jasmeet Kaur, Advocate.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. The present petition has been filed challenging the impugned order/judgment dated 29th September, 2020 passed by Id. District Judge, by which the Petitioner/Defendant's application under Order VII Rule 11 and application under Section 151 of CPC have been dismissed with imposition of costs of Rs.10,000/- to be paid to the Plaintiff.
3. The brief background of this case is that the Plaintiffs/Respondents herein preferred the suit for possession, damages and mesne profits as also for permanent injunction and other reliefs in relation to property bearing no. *Third Floor measuring 123 sq yards (right side portion) of property no. 17B/10, Dev Nagar, Karol Bagh, New Delhi (hereinafter, 'suit property')*. The trial in the said suit has already been concluded and it is at the stage of final arguments. Two applications under Order VII Rule 11 and under Section 151 of CPC were then preferred by the Defendant.
4. The application under Order VII Rule 11 has been filed by the

Defendant seeking rejection of the plaint on the ground that the Plaintiff is an unregistered partnership firm and since it is not a registered firm, it therefore cannot maintain the suit. The second ground for seeking rejection of plaint is that a sum of Rs. 15,00,000/- had been paid to the Plaintiffs at the time when the Defendant was inducted as a tenant in the suit property, and the same ought to be returned to the Defendant. Finally, it is also argued that the lease deed, on the basis whereof the suit was filed, is a forged document.

5. Ld. District Judge has considered these submissions and has held that there is a distinction between dismissal of suit and rejection of plaint, inasmuch as under an Order VII Rule 11 application, the court cannot travel beyond the plaint. The stand of the Plaintiffs Nos. 2, 3 and 4 being that they are co-owners of the suit property, even a single co-owner can maintain a suit for possession.

6. In so far as the application under Section 151 of CPC for re-opening the evidence is concerned, the ground for reopening was for summoning the Notary Public as a witness. Ld. District Judge has rejected the application on the ground that since the Defendant has specifically admitted his signature on the lease deed, summoning of the Notary Public as a witness is not required.

7. Mr. Hitender, ld. counsel for the Petitioner submits that the Plaintiff No. 1 should be directed to place on record the copy of the registration of the partnership firm. On the other hand, if not for the same, the said firm should be deleted from the arrays of Plaintiffs.

8. Ms. Jasmeet Kaur, ld. counsel appearing for the Plaintiff/Respondent submits that the co-owners are recorded as Plaintiffs Nos. 2,3, and 4 even one co-owner can maintain the suit, as has been held by the ld. District

Judge as well. She also submits that in any event, all these issues will be finally decided by the Court at the final stage. She has already finished her final arguments in the matter and the case is now listed on 29th November, 2020 for conclusion of final arguments.

9. After hearing the Id. counsels for the parties, this Court is of the opinion that the impugned judgement/order is properly reasoned. The application under Order VII Rule 11 has been rightly dismissed, on the ground that, at the stage of final arguments when the trial has already concluded, such an application cannot be entertained. Further, even on merits, Id. District Judge has considered the factual matrix of the case and has held that no case is made out for rejection of the plaint. Insofar as the application under Section 151 of CPC is concerned, since the signatures on the lease deed are admitted, the question of summoning the Notary Public as a witness does not arise.

10. In any event, the following issues have already been framed in the suit vide order dated 11th March 2019, which have to be adjudicated at the final stage:

- “1. Whether the plaintiffs are entitled for decree of possession against defendant? OPP*
- 2. Whether the plaintiffs are entitled to decree for a sum of Rs.1,30,000/- as arrears of rent? OPP*
- 3. Whether the plaintiffs are entitled for recovery of Rs.1,82,000/- against defendant towards arrears of fitting and fixtures charges as claimed? OPP*
- 4. Whether plaintiffs are entitled to decree of mandatory injunction? OPP*
- 5. Whether the plaintiffs are entitled for decree of damages at the rate claims for? OPP*
- 6. Whether the plaintiffs are entitled for a*

*decree of permanent injunction as claimed for?
OPP*

*7. Whether the plaintiffs have not approached the
court with clean hands and suppressed material
facts? OPD*

*8. Whether the suit of the plaintiffs is based on
forged and fabricated documents? OPD*

*9. Whether there is no privity of contract
between the parties? OPD*

*10. Whether the present suit is without
cause of action? OPD*

*11. Whether the present suit has neither
been valued properly for the purpose of court fees
and jurisdiction nor the appropriate court fee has
been paid on the plaint? OPD.*

12. Relief.”

11. The above issues would be finally adjudicated after hearing Id. counsels for the parties and after appreciating the pleadings and evidence on record. Needless to add that the order dated 29th September, 2020 would not have any bearing in the adjudication on merits at the final stage.

12. Under these circumstances, the costs are reduced to Rs.5,000/- and shall be paid before the next date of hearing before the Id. District Judge to the Id. counsel for the Plaintiff.

13. The present petition is disposed of, in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**NOVEMBER 6, 2020
MR/A**