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

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Date of decision: 18.03.2021

+ C.R.P. 28/2021

NAVEEN KUMAR

..... Petitioner

Through Mr. Ajay Sharma, Mr. Abhishek
Raj Sharma, Mr. J.K. Nayyar and
Ms. Radhika Sharma, Advocates.

versus

MEENAKSHI GOEL

..... Respondent

Through Mr. Vibhor Garg and Ms. Nikita B.
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Present Revision Petition has been filed under Section 115 CPC against the impugned judgment dated 05.02.2021 passed by the Trial Court whereby two applications filed on behalf of Defendant have been dismissed. One application was filed under Order VII Rule 11 CPC dated 12.02.2020 and the other under Section 151 CPC dated 08.10.2020. Petitioner is the Defendant before the Trial Court and the Respondent is the Plaintiff.

2. The brief facts necessary for disposal of the revision petition are that the Plaintiff had filed a suit for recovery of Rs.55,01,274/- against the Defendant. Plaintiff is the sole proprietor of M/s. Veejay Service Station

and is engaged in the business of fuel stations and supply of fuel to various petrol pumps. Defendant is the sole proprietor of M/s. Power Plus and is engaged in the business of generator rentals. Plaintiff alleged that she had supplied diesel to the Defendant from November, 2016 to August, 2017 and as per the statement of account maintained by her, an amount of Rs.46,26,809/- is due and payable to the Plaintiff, as on 07.10.2019. Recovery of the said amount along with interest @ 18% p.a. is sought in the suit.

3. On summons of the suit being received, Defendant filed a written statement along with the aforesaid two applications, which were dismissed by the impugned order.

4. Arguments of the Petitioner with respect to the application under Order VII Rule 11 CPC were that (a) the suit is without cause of action as nothing is brought on record in the plaint to show how and when the cause of action arose; (b) Plaintiff has not attached the original documents with the plaint and has only filed photocopies of the invoices which are self serving documents of the Plaintiff; (c) suit is barred by limitation as no bill was served on the Defendant after 20.08.2016 and (d) Plaintiff has forged and fabricated the bills and has not specifically stated in the Plaint as to when the Defendant made part payment.

5. The Plaintiff contested the said application and filed a reply. It was denied that the bills/invoices were not served on the Defendant. It was averred that the parties had maintained running account and during the period between November, 2016 to August, 2017, multiple transactions have taken place and the bills have been annexed along with the Plaint

which reflect that the last payment was made by the Defendant on 02.08.2017.

6. The Trial Court after considering the application and hearing the parties, dismissed the application under Order VII Rule 11 CPC vide the impugned order on the following grounds :-

(a). Suit is based on Statement of Account of bills which are for the period from 09.11.2016 to 05.02.2017. The statement has been filed along with the copy of the bills and a certificate to that effect, reflecting the amounts received and the goods supplied;

(b). Plaintiff has filed relevant documents and made specific averments in the plaint including the averment that payment of Rs.2 Lakh was received by way of cheque on 02.08.2017; and

(c). The account was a running current account and if part payment is made, the limitation will continue to run from the date of payment as it amounts to acknowledgement. The suit is not barred by limitation, which in any case is a mixed question of law and fact.

7. In so far as the application under Section 151 CPC is concerned, the relief sought by the Defendant was for dismissal of the suit alleging that the Statement of Truth was not filed along with the Plaint. The argument of the Defendant was that the Affidavit / Statement of Truth supporting the plaint was not signed by the Plaintiff, but was signed by an employee, namely, Ms. Charu Khanna and thereafter when the replication was filed, the Statement of Truth accompanying the replication was filed by some other person, namely, Mr. Gurnam Singh, Manager of the

Plaintiff. Plaintiff was not supported by a duly executed Power of Attorney in favour of Ms. Charu Khanna as she has not signed on the said document, in acceptance.

8. Reply to the said application was filed by the Plaintiff stating therein that as per Order VI Rule 15A(2) CPC as amended by the Commercial Courts Act, an Affidavit in support of the pleading can be filed by the party or by any other person on behalf of such party, who is proved to the satisfaction of the Court to be acquainted with the facts of the case and is duly authorized by such party.

9. The Trial Court after examining the record rendered a finding that the Plaintiff has executed two Power of Attorneys, one dated 20.03.2019 (counsel for Respondent clarifies that there is a factual error in the date, as the actual date is 25.03.2019), executed in favour of Ms. Charu Khanna and the second in favour of Sh. Gurnam Singh, both of whom are working with the Plaintiff in the capacity of Accountant and Manager respectively. Power of Attorneys were duly executed, notarized and accepted by the Attorney Holders which is evident from the Statement of Truth and the verification of pleadings. Provisions of Order VI Rule 15A(2) CPC provide that the affidavit can be signed by a party or any other person on behalf of the party, subject to the conditions mentioned therein.

10. I have heard learned counsels for the parties and perused the impugned order.

11. In so far as the application under Section 151 CPC is concerned, in my view, the Trial Court has rightly relied on Order VI Rule 15A (2) as amended by the Commercial Courts Act, which is extracted hereinunder for ready reference:-

"An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorized by such party to parties."

12. A perusal of the said provision indicates that an affidavit under sub-rule (1) of Rule 15A of Order VI CPC, in support of the pleadings, can be signed by the party or by one of the parties to the proceedings or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorized by such party or parties, by virtue of sub-rule (2). Trial Court, after examining the records, has returned a categorical finding that the plaint is supported by an affidavit of Ms. Charu Khanna alongwith Power of Attorney executed by the Plaintiff in her favour and accepted by her. Statement of Truth filed by Sh. Gurnam Singh is also supported by a duly executed Power of Attorney.

13. In view of the provisions of Order VI Rule 15A(2) CPC, it is wrong for the Petitioner to contend that the Plaintiff should have necessarily filed her own affidavit in support of the plaint and the replication. Trial Court has satisfied itself on the aspect of the authorization in favour of the Power of Attorney holders as well as their

execution and notarization, in accordance with law. The Statements of Truth and the Power of Attorneys are place on record of this Court also. Having perused the documents, I am of the view that the Trial Court has not committed any error in rendering a finding that the pleadings are supported by Statements of Truth and affidavits, duly signed by the Power of Attorney Holders. Merely because the plaint is supported by the Statement of Truth / Affidavit of Ms. Charu Khanna and the replication is supported by the Statement of Truth or Affidavit of Sh. Gurnam Singh cannot be a ground to dismiss the plaint. Both are the employees of the Plaintiff and have been duly authorized to sign and affirm the pleadings. There is thus no merit in this contention of the Petitioner.

14. In so far as the application under Section VII Rule 11 CPC is concerned, law with regard to rejection of plaint under Order VII Rule 11 CPC is no longer *res-integra*.

15. In Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) (2020) 7 SCC 366, it has been held by the Supreme Court as follows:-

“23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 In *Azhar Hussain v. Rajiv Gandhi* this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on

the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success , which reads as :

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12 In Hardesh Ores (P.) Ltd. v. Hede & Co. the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

23.13 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra. The plea that once issues are framed, the matter must

necessarily go to trial was repelled by this Court in Azhar Hussain case.

23.15 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.”

16. A Division Bench of this Court recently on 12.10.2020 in Karan Goel v. Kanika Goel **2020 SCC OnLine Del 1319** has again elaborately discussed the law on Order VII Rule 11 CPC. Relevant paras are as follows:-

“13. We have given our thoughtful consideration to the submissions made by Mr. Prabhjit Jauhar, learned counsel for the appellant/husband and Mr. Malvika Rajkotia, learned counsel for the respondent/wife, examined the documents on the record including the pleadings in the application moved by the appellant/husband under Order VII Rule 11 CPC and perused the impugned judgment and order.

14. To set the tempo, we may start by referring to the legal position. It is well settled that a plaint can be rejected on any of the grounds enumerated under Order VII Rule 11 of the CPC. It is equally well settled that on going through an application moved under Order VII Rule 11 CPC, the court is required to examine the plaint as a whole and take the averments made therein to be correct. If on a reading of the plaint, a cause of action is made out, then the plaint cannot be rejected. While dealing with an application under Order VII Rule 11 CPC, the court must forebear from going into disputed questions of facts including the defence taken by the defendant in his written statement or his application for rejection of the plaint. [Refer: Inspiration Clothes & U. v. Collby International Ltd., 88 (2000) DLT 769; Tilak Raj Bhagat v. Ranjit Kaur, 159 (2009) DLT 470; Bhau Ram v. Janak Singh, V (2012) SLT

536; *Tilak Raj Bhagat v. Ranjit Kaur*, 2012 (5) AD (Del) 186; *Indian City Properties Ltd. v. Vimla Singh*] 198 (2013) DLT 432; and *Razia Begum v. DDA* 215 (2014) DLT 290 (DB)].

15. *It may also be emphasized that for deciding an application filed under Order VII Rule 11 CPC, the court must not be selective in picking upon the averments made in the plaint and read them in isolation. Instead, a meaningful reading of the entire plaint must be conducted for the court to satisfy itself as to whether the averments made therein, if taken to be correct in their entirety, would result in a decree being passed. The manner of examination which a court is expected to undertake for scrutinizing the plaint and the documents filed to decide an application under Order VII Rule 11 CPC, have been discussed by the Supreme Court in a catena of decisions including in T. Arivandandam vs. T.V. Satyapal & Anr., reported as 1977 (4) SCC 467, Popat and Kotecha Property vs. State Bank of India Staff Association reported as (2005) 7 SCC 510 and Hardeh Ores Pvt. Ltd. vs. M/s. Hede & Company reported as 2007 (5) SCC 614.”*

17. Therefore, while deciding an application under Order VII Rule 11 CPC, Court is required to look only to look at the plaint in its entirety along with the documents annexed thereto and not the defence set out by the Defendant in the written statement. In the present case, Trial Court has examined the plaint and the documents and has come to a conclusion that it discloses a cause of action. In so far as the issue that the suit is time barred, is concerned, the Trial Court has rendered a prima facie finding that there was a running account and in part performance a cheque of Rs.2 Lakh was received from the Defendant on 02.08.2017. At this stage, the said finding in an application under Order VII Rule 11 CPC does not call for any interference, more so because limitation is a mixed question

of law and facts as held in several judgments. The finding of the Trial Court is as follows :-

“9 The cause of action is bundle of facts which the plaintiff is required to traverse in order to succeed in claim. Although it is desirable but it is not necessary that each date is to be mentioned if there are number of dates. The plaintiff has filed relevant documents and made specific averments. As regards the submission that the payment is not specifically mentioned, the same is shown in the statement of account and payment is shown as received by way of cheque on 02.08.2017 of Rs. 2 Lakhs. Once the account is current running, the limitation will accordingly start and if part payment is made it may amount to acknowledge. This is also mixed question of law and facts. Therefore, it cannot be said that the suit is barred by limitation. I am of the opinion that the plaint alongwith the document clearly show cause of action as well as on the face of it, it is within the limitation. The application is therefore devoid of any merit and hence dismissed with cost of Rs. 5,000/-.

18. I am supported in my view by the judgment of a Co-ordinate Bench of this Court in Modtech Furniture Private Ltd. v. NCUBE Planning Design Private Limited and Another **2020 SCC OnLine Del 646**. Relevant paras read as under:-

“7. Defendant has now filed the present application under Order 7 Rule 11 CPC for rejection of the plaint. In the application it is pleaded that the suit is barred by limitation as the cause of action last arose on 23.12.2013 when the invoice was generated. It is claimed that the copy of the invoice was not filed along with the suit but was filed along with the additional documents. It is also pleaded that the communications dated 6.1.2014 and 14.1.2014 do not extend the limitation period as the admission is conditional. It is further pleaded that the suit was returned by order dated 3.10.2016 by the Bombay High Court. It is further pleaded

that the plaintiff ought to have filed an application under section 14 of the Limitation Act, 1963 to claim the benefit of section 14 of the Limitation Act. Crucial aspects have not been pleaded and so the plaintiff is not entitled to the benefit of section 14 of the Limitation Act.”

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“22. I may note that usually the issue of limitation is a mixed question of law and fact. What defendant No.1 seeks is an adjudication of the issue of limitation at the initial stage itself before even an opportunity has been given to the plaintiff to show that it was prosecuting the litigation before the Bombay High Court with due diligence and in good faith.”

19. Learned counsel for the Petitioner has drawn the attention of the Court to an order passed by a Co-Ordinate Bench of this Court on 05.10.2020 in a Revision Petition, wherein a challenge was laid by the Petitioner therein to an order passed by the Trial Court under Order VII Rule 11 CPC and submits that notice had been issued in the said petition and the Court has called for the records of the Trial Court to ascertain if the documents filed in the said case are forged and fabricated or otherwise.

20. Mr. Garg, on the other hand, has brought to the notice of the Court that in the said case there was already an order passed with regard to the dishonor of the cheque in question and proceedings were initiated under Section 138 of Negotiable Instruments Act, 1881 which have been quashed. He has handed over a copy of the order passed by the High Court of Uttarakhand in **Crl.Msc Appl No. 307/2006** titled as Ms. Raj

Bala Mudgal & Ors. Vs Wazir Hasan & Anr, relevant para of which is as follows:-

“ 9. For the reasons recorded above, this Court is of the opinion that both the complaints are mischievous act of the complainant Wazir Hasan at the behest of previous Secretary of the society Mr. Mahesh Belwal. Therefore, the trial in pursuance of these complaints cannot be permitted to proceed. Consequently, both the petitions are allowed. Impugned orders of cognizance dated 01.03.2006 and 29.03.2006 as well as the entire proceedings of both the aforementioned impugned complaint cases are hereby quashed.”

21. Copy of the order has been handed over to Mr. Sharma.
22. Mr. Garg therefore submits that the said case is completely distinguishable from the facts of the present case.
23. I am of the considered view that the facts of the said case are completely distinguishable from the present case. Application under Order VII Rule 11 CPC has to be examined by the Court in each case depending on the facts and circumstances of that case and facts of one case may justify rejection of the plaint but the same may not be justified in another case. As noted above, the facts of this case do not merit dismissal of the plaint at the threshold and thus there is no merit in the present petition.
24. Accordingly, the present petition is dismissed.

25. Mr. Garg at this stage submits that he will not press for payment of costs of Rs.5,000/- imposed by the Trial Court.

JYOTI SINGH, J

MARCH 18, 2021

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