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

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**Date of decision: 08.04.2021**

+ C.R.P. 35/2021

JAMNA DEVI

..... Petitioner

Through Mr. Kunal Raheja, Advocate.

versus

AYODHYA PRASAD

..... Respondent

Through None.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JYOTI SINGH, J. (ORAL)**

**CM No. 13462/2021 (Exemption)**

Allowed, subject to all just exceptions.

Application is disposed of.

**C.R.P. 35/2021 and CM No. 13461/2021**

1. Present Civil Revision Petition has been filed assailing an order dated 21.01.2021 passed by the learned Trial Court rejecting an application filed by the Defendant under Order VII Rule 11 CPC. The Petitioner herein is the Defendant and the Respondent is the Plaintiff before the Trial Court.

2. Respondent filed a suit bearing No.55/2020 for possession and permanent injunction claiming himself to be the owner of the suit

property since 1994 and also claiming that possession of the property was handed over to the late husband of the Defendant in January, 2005, out of love and affection but after his death in August, 2005, Defendant has continued in possession and is refusing to vacate. Defendant filed a written statement along with an application under Order VII Rule 11 CPC for rejection of the plaint.

3. The learned Trial Court vide order dated 21.01.2021 dismissed the application under Order VII Rule 11 CPC and has listed the matter for admission / denial and framing of issues. The application was premised on two grounds, limitation and improper valuation.

4. In so far as the valuation is concerned, learned Trial Court has given liberty to the Plaintiff to pay the Court Fee at a valuation of Rs.11,00,000/- together with Court Fee payable on the quantum of damages claimed by the Plaintiff, within a period of four weeks, as the counsel for the Plaintiff had himself agreed to deposit the deficient Court Fee. In so far as the issue of limitation is concerned, the Trial Court agreed with the contention of the Plaintiff that it was a mixed question of fact and law and could not be decided at the threshold.

5. Mr. Kunal Raheja, learned counsel for the Petitioner contends that the suit is barred by limitation as according to the recitals in the plaint itself, the Plaintiff claimed that he had given possession of the suit property to the Defendant / husband in January, 2005 and that after the death of the husband of the Defendant on 06.08.2005, he allowed the Defendant and the minor children to continue in possession out of love and affection. Going by the averment in the plaint, the suit is barred by

limitation under Article 65 of Schedule 1 of Limitation Act, 1963, which provides a limitation of 12 years to sue for possession of immovable property.

6. It is also contended that the suit was not properly valued for the purpose of Jurisdiction and Court Fee, inasmuch as the suit was valued for the purpose of Court Fee and Jurisdiction at Rs. 11 Lakhs but a fixed Court Fee has been paid.

7. I have heard the learned counsel for the Petitioner.

8. In so far as the objection of the Court Fee is concerned, the Trial Court has directed the Plaintiff to deposit the Court fee as per the valuation of Rs. 11 Lakhs as also the Court Fee as leviable on the quantum of damages claimed by the Plaintiff, within four weeks from the date of the order.

9. In so far as limitation is concerned, the Trial Court has held that limitation being a mixed question of fact and law, issue to that effect will be framed at the time of framing the issues.

10. In so far as the application under Section VII Rule 11 CPC is concerned, law of rejection of Plaint under Section VII Rule 11 CPC is no longer *res-integra*.

11. 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<sup>2</sup>, read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

*23.7 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :*

*14: Production of document on which plaintiff sues or relies.— (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

*(4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”*

*23.8 Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

*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.”*

12. 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 Haradesh Ores Pvt. Ltd. vs. M/s. Hede & Company reported as 2007 (5) SCC 614.”*

13. From the aforesaid judgments, it is clear that while examining an application for rejection of plaint, at the threshold, under Order VII Rule 11 CPC, Court has to only examine the plaint in its entirety along with the documents annexed thereto.

14. It is also equally well settled that limitation is a mixed question of law and fact. 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.”*

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*“24. While considering an application under Order 7 Rule 11 CPC only averments made in the plaint are to be looked at and the accompanying documents. Reference in this context may be had to the judgment of this court in the case of Tilak Raj Bhagat vs. Ranjit Kaur, 2012 SCC OnLine Del 1675 wherein this court held as follows:-*

*"6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff."*

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*26. Reference may also be had to the judgment of the Supreme Court in the case of Hardesh Ores Pvt. Ltd v. Hede and Company (2007) 5 SCC 614 wherein the court noted as follows:*

*"25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action 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."*

15. The Petitioner in the application under Order VII Rule 11 CPC has averred that the suit is barred by limitation as the Plaintiff stated in the plaint that she permitted the defendant to reside in the property in January, 2005 out of love and affection. This is a misleading fact as the Plaintiff is neither the owner of the Property nor has any legal interest

therein. The husband of the Defendant expired in the suit property and there was no reason for the Defendant to request the Plaintiff to allow her and her children to reside therein and they have been in possession of the suit property since 1991. The Plaintiff, on the other hand, has averred in the plaint that the suit property was purchased by the Plaintiff from his own sources and he is the owner of the same. The husband of the Defendant was the real brother of the Plaintiff and in January, 2005 when he fell ill, the Defendant requested the Plaintiff to allow her and the family members to live in the property. On account of fiduciary relationship, Plaintiff permitted the Defendant to reside due to love and affection. Unfortunately, husband of the Defendant expired on 06.08.2005 and the Defendant requested the Plaintiff to permit the family to reside till the children are able to earn and arrange another accommodation. Since the Plaintiff was not in need of the accommodation, he permitted the family to reside therein. However, subsequently, the children started earning and the Plaintiff requested the Defendant to vacate, but the Defendant deferred the matter on one pretext or the other. Finally, the Plaintiff requested the Defendant to vacate on 01.12.2019 followed by a legal notice on 07.12.2019.

16. Having perused the plaint, the learned Trial Court dismissed the application for rejection of plaint on ground of limitation. When seen in entirety, it cannot be argued that the plaint merits rejection at the threshold. The contentions raised by the Defendant would have to be judged in the background of the facts and evidence in order to determine if the suit is barred by limitation. Plea of limitation cannot be decided as

an extract principle of law bereft of facts as the starting point or commencement of limitation could be entirely a question of fact. Petitioner has raised issues which touch upon the commencement of the limitation period, which in my view is a factual controversy. The issues raised by the Defendant cannot be adjudicated while deciding an application under Order VII Rule 11 CPC and the Trial Court has rightly rejected the application.

17. No grounds are made out for this Court to interfere in the impugned order under its powers of Revision. Petition is accordingly dismissed along with the pending application.

**JYOTI SINGH, J**

**APRIL 08, 2021**

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