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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16th December, 2021

+ C.R.P. 98/2021

SHRI VIMAL KUMAR TAHEEM Petitioner

Through: Mr. Bhuvneshwar Tyagi, Advocate
(M: 8826824663)

versus

HARI OM NIRALA Respondent

Through: None

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPLs. 45558-45559/2021 (for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

CRP 98/2021 & CM APPL. 45557/2021 (for stay)

3. This is a petition challenging the impugned Order dated 29th November, 2021 passed by Id. ADJ-04/Dwarka Courts/SW/New Delhi (*hereinafter* “*trial court*”) by which the application filed by the Petitioner/Defendant (*hereinafter* “*Defendant*”) under Order VII Rule 11 in the suit has been dismissed. The brief background of the matter is that a suit for recovery of a sum of Rs.6 lakhs was filed by the Respondent/Plaintiff (*hereinafter* “*Plaintiff*”) against the Defendant on the ground that a friendly loan of Rs. 6,00,000/- (six lacs) was advanced by the Plaintiff to the Defendant. The suit was instituted by the plaintiff in 2011. In the suit, the Defendant took the defence that the Plaintiff and the Defendant were not known to each other and further, the allegations of the Defendant are that the

four blank cheques were actually given by the Defendant to one Sh. Rampal in re-payment of a loan that he took from Mr. Ram Pal. It is his submission that Mr. Ram Pal and Sh. O.P. Bharti, who is the Counsel for the Plaintiff before the trial court have conspired and implicated the Defendant in the suit.

4. Initially, the suit was filed under Order XXXVII CPC in which application seeking leave to defend under Order XXXVII Rule 3(5) CPC was dismissed by the trial court vide order dated 30th May, 2012. An appeal was filed against the said order by the Defendant and conditional leave was granted by this Court whereby the Defendant was directed to deposit 50% of the suit amount. The matter is currently at the stage of evidence before the trial court. Plaintiff's evidence has already been closed. The Defendant has led the evidence of three of his witnesses. Ld. Counsel for the Defendant submits that he also has additional witnesses whom he wishes to examine as defence witnesses.

5. The Court has at this stage examined the application of Defendant under Order VII Rule 11 and held that the issues raised in the application would have to be considered post the trial and cannot be appreciated at this stage. Ld. counsel appearing for the Defendant relies upon the statement made in Plaintiff's evidence where according to him, the Plaintiff admits that he did not know the Defendant. He further relies upon the order passed by the Metropolitan Magistrate-07 (Central) in **CT No. 529831/2016** titled **Vimal Kumar Taheem vs. Ram Pal**, P.S. Sabzi Mandi on 18th December, 2020 where the Ld. Metropolitan Magistrate had held that a *prima facie* offence of extortion is made out under Section 384 read with Section 34 IPC against Respondents No.1 & 2 i.e., Sh. Ram Pal and Sh. O.P. Bharti. In this

background, the Defendant submits that the suit itself is liable to be dismissed for lack of cause of action.

6. The Court has perused the impugned Order as also the material placed on record and relied upon by the Defendant during oral submission. The clear position as on today is that the suit is at the stage of evidence and Plaintiff's evidence has been concluded. The Defendant's evidence is already underway and the matter is now listed on 20th January, 2022 before the Id. ADJ for further defendant's evidence. The suit dates back to 2011 and it is after a period of 10 years that the matter is in fact nearing conclusion. All the submissions being made by the counsel for Defendant are on merits and would require appreciation of the documentary and oral evidence which have been led by the parties before the trial court.

7. In so far as the order passed by the Id. Metropolitan Magistrate and the role of Mr. O.P. Bharti or Mr. Rampal is concerned, all these averments and orders etc. can be placed before the trial court to substantiate the Defendant's case. However, on the basis of the material placed on record by the Id. Counsel for the Defendant, it cannot be said that there is no cause of action in the suit at hand. The settled position in law is that while considering an application under Order VII Rule 11 only the plaint is to be seen. The counsel for the Defendant relies upon the judgment of the Supreme Court in *Liverpool & London S.P. & I Assn. Ltd. V M.V. Sea Success I 2004 (9) SCC 512*. The said judgment lays down the basic principles governing an application under Order 7 Rule 11. However, in the factual situation of the present case, the judgment would have no application. The averments and pleas raised by the Defendant being part of his evidence would be considered as part of final adjudication of the suit.

Considering that the suit is pending since 2011 and more than ten years have passed, the trial court is directed to proceed with the suit expeditiously. No unnecessary adjournments shall be granted to either party.

8. Another important aspect which the Defendant's counsel has brought to the Court's attention is that the counsel for the Plaintiff before the Trial Court, Mr. O.P. Bharti is filing pleadings on behalf of the Plaintiff along with his own affidavits. The trial Court shall caution the counsel and ensure that counsels who appeared in the matter as lawyers and Advocates do not file pleadings or affidavits as parties themselves.

9. With these observations, the petition is dismissed with no order as to costs. The pending application is also dismissed.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2021/mw/SK