

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR No. 3959 of 2022
Date of Decision :5.12.2022**

*Dr. Nidhi Bansal and others**..... Petitioners**versus**M/s Sanat Realtors Private Limited and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Arvind Bansal, Advocate, for the petitioners

Mr. Aalok Jagga, Advocate, for the caveators/respondents

TRIBHUVAN DAHIYA J. (ORAL):

1. This is a revision petition under Article 227 of the Constitution of India for setting aside the order dated 1.8.2022 passed by the trial Court dismissing the applications filed by the defendants no. 8, 11, 12, 13, 14, 17, 18, 20 and 22 (hereinafter referred to as 'the defendants') for rejection of plaint under Order VII Rule 11 CPC.

2. Facts of the case in brief are, that respondent no.1/plaintiff (hereinafter referred to as 'the plaintiff') filed a suit for declaration on the pleadings that it is owner in possession of the suit land on the basis of two sale deeds, dated 29.6.2020 and 13.7.2020, executed for consideration of Rs.50 lakhs and Rs.80 lakhs respectively. The sale consideration was paid vide postdated cheques mentioned in both the sale deeds. However, on presentation, the same were dishonored on account of 'insufficient funds'. Defendants no.2 and 3 being Directors of defendant no.1, executed affidavits dated 17.4.2021 in

favour of the plaintiff in the presence of witnesses and agreed to return the suit property to the plaintiff. And the possession was delivered back to the plaintiff. Only when defendants no.4 to 22, the subsequent purchasers of the suit land, started creating hindrance in the plaintiff's possession by obstructing the construction work being carried out by it there, the suit in question was filed for declaration that it was owner in possession of the suit property and the sale deeds executed by it dated 29.6.2020 and 13.7.2020 were null and void. The aforementioned defendants filed applications under Order VII Rule 11 CPC for rejection of the plaint on similar grounds of non-payment of *ad valorem* Court fees as well as non-disclosure of cause of action against them.

3. The trial Court vide the impugned order dated 1.8.2022 held the suit to be under-valued. Since the plaintiff has sought a declaration that it was owner in possession of the suit property and the sale deeds executed by it were null and void, *ad valorem* Court fees on the sale consideration was required to be paid. The plaintiff was, accordingly, directed to affix the same. This finding is not under challenge before this Court.

4. The other ground on which rejection of the plaint was sought before the trial Court was non-disclosure of cause of action. The trial Court, however, held that the plaint did disclose the cause of action and dismissed the applications under Order VII Rule 11 CPC to that extent. The same is under challenge before this Court by three of the applicants/defendants only, i.e., defendants no. 8, 11 and 22 (hereinafter referred to as 'the defendants'). Their applications are placed on record as Annexures P-9 and P-10, wherein rejection of plaint has been sought on ground of non-disclosure of any cause of action against them.

5. Learned counsel for the defendants has argued that the suit is a result of collusion between the plaintiff and defendants no.1 to 3, i.e., the

defendant company and its directors. He has further contended that no cause of action has been disclosed in the plaint qua the defendants to seek declaration that the sale deeds in question are null and void. Since, firstly, it is admittedly a case where the sale deeds were executed without consideration. The plaintiff itself has pleaded that no sale consideration was paid to it by defendant no.1/vendee, as the cheques given were dishonoured. Therefore, such sale deeds are invalid and afford no cause of action to file the suit. Secondly, possession of the property was with the defendants, and the same was never delivered back to the plaintiff. He has relied upon the recitals in the subsequent sale deeds in their favour executed by defendant no.1/vendee, wherein delivery of possession to them has been recorded. In support of his submissions learned counsel has placed reliance upon the judgment of the Supreme Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)(D) thr. LRs and others*: 2020 (7) SCC 366.

6. *Per contra*, learned counsel for the plaintiff contends that to decide the applications under Order VII Rule 11 CPC, Court is not to look into the merits of the case, and has only to go by the pleadings in the suit. He has further contended that even if sale deeds were executed without consideration, a declaration *qua* them can be sought. In support this contention, he has relied upon the judgment passed by the Supreme Court in *Kewal Krishan v. Rajesh Kumar and others* 2022 AIR (SC) 564.

7. Learned counsel for the parties have been heard.

8. The preliminary issue that arises for consideration on the facts of the case is, whether rejection of plaint *qua* some of the defendants can be sought under provisions of Order VII Rule 11 CPC. Only three of the defendants, i.e., defendants no. 8, 11 and 22, out of the twenty two, are before this Court seeking rejection of the plaint on the ground that it does not disclose

any cause of action *qua* them, since they are in possession of a part of the suit land on the basis of subsequent sale deeds executed by defendant no.1 in their favour between 29.6.2020 and 13.7.2020, coupled with delivery of possession. Provisions of Order VII Rule 11 (a) CPC confer the power upon Court to reject a 'plaint' in case of non-disclosure of any cause of action by it. The power conferred is to reject the plaint in toto; the plaint can only be rejected as a whole against all the defendants, and not in part against some of them. This issue stands settled by the law laid down by the Supreme Court in *Madhav Prasad Aggarwal and another v. Axis Bank Limited and another* (2019) 7 SCC 158. The ratio of the judgment is reflected in para no.11 thereof, which reads as under:

11. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11 (d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd.* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11 (d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11 (d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint *qua* any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if

the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

9. In view of the law laid down, three of the defendants, who are before this Court, cannot seek rejection of the plaint *qua* them. The plaint can only be rejected as a whole or not at all.

10. Therefore, the defendants' applications under Order VII Rule 11 CPC being not maintainable, the arguments raised by learned counsel for the parties need not be considered. The impugned order does not call for any interference.

11. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

5.12.2022

Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No