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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + CM(M) 1020/2022 & CM APPL. 42135/2022, CM APPL. 42136/2022

RAMESH KUMAR DANG & ORS. Petitioners
 Through: Mr. Abhishek Kumar, Adv.

versus

TARUN WADHWA Respondent
 Through: Mr. Ankur Mahindro, Mr. SHresth Choudhary and Mr. Soumil Gonsalves, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
27.09.2022

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1. This petition, under Article 227 of the Constitution of India, assails order dated 7th June 2022, passed by the learned Additional District Judge (“the learned ADJ”) in Civil Suit 11571/2016 (as re-numbered) (*Ramesh Kumar Dang v. Tarun Wahdwa*).

2. By the said order, the learned ADJ has dismissed the application of the petitioners, as the plaintiffs in the suit, for review of an earlier order dated 31st August 2015, passed therein. The order dated 31st August 2015 allowed an application of the respondent, as the defendant in the suit, preferred under Order VII Rule 11¹ of the Code

¹ **11. Rejection of plaint.**- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;



of Civil Procedure, 1908 (CPC), in part.

3. The issue in controversy is limited; ergo, a brief recital of facts would suffice.

4. The petitioners, as the plaintiffs in Civil Suit 611571/2016, sought specific performance of an agreement to sell dated 5th February 1990, along with injunctive reliefs.

5. The prayer clause in the suit read thus:

“In view of the facts and circumstances of the case and in the interest of justice it is therefore most respectfully prayed that this Hon'ble court may graciously be pleased to pass a decree of Specific Performance, Permanent and Mandatory injunction

a) to direct the defendant to execute sale deed in favour of the plaintiff in respect of the property bearing no. 1052/14, Pan Mandi, First Floor, Sadar Bazar, Delhi -110006 alongwith second floor and roof/terrace upto sky high as per the agreement dt. 05.02.1990 executed between father/ grandfather of plaintiffs Late Sh. Laxmi Narain and Late Smt. Krishna Devi, mother of the defendant, being only legal heir of the late Smt. Krishna Devi as shown in red colour in the site plain annexed with this plaint and to receive the remaining balance amount of Rs.2,50,000/- from the plaintiffs.

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- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
 - (d) where the suit appears from the statement in the plaint to be barred by any law;
 - (e) where it is not filed in duplicate;
 - (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.



b) to declare the rent agreements dt. 23.05.1989 in respect of suit property executed between the late Sh. Laxmi Narain and Late Smt. Krishna Devi as null and void after execution of bayana cum agreement to sell dt. 05.02.1990;

c) to declare the rent receipts issued by the defendant and his mother as null and void as the said receipts were only towards occupation charges as per the agreement to sell dt. 05.02.1990;

d) to pass a decree of permanent injunction in favour of the plaintiffs and against the defendant, thereby restraining the defendant, his General Power of Attorney Holders, agents, legal heirs, successors, assigns, representatives, employees etc. from selling, transferring the property bearing no. 1052/14, Pan Mandi, First Floor, Sadar Bazar, Delhi -110006 alongwith second floor and roof/terrace upto sky high as shown in red colour in the site plain annexed with this plaint to any third person except the plaintiffs as the plaintiffs are still ready and willing to purchase the same as per the Agreement dt. 05.02.1990;

e) Pass a decree of permanent injunction in favour of plaintiffs and against the defendant thereby restraining him, his agents, conspirators, accomplices and servants from forcibly dispossessing the plaintiff without due process of law from the property bearing no. 1052/14, Pan Mandi, First Floor, Sadar Bazar, Delhi -110006 alongwith second floor and roof/terrace upto sky high more specifically shown red in colour in the site plan attached alongwith the present plaint;

f) Pass a decree of mandatory injunction in favour of plaintiffs and against the defendant thereby restraining him and his agents or representatives from interfering in the peaceful, lawful, uninterrupted and exclusive possession of the plaintiff in the property bearing no. 1052/14, Pan Mandi, First Floor, Sadar Bazar, Delhi -110006 alongwith second floor and roof/terrace upto sky high more specifically shown red in colour in the site plan attached alongwith the present plaint.



e) Any other order or relief which this Hon'ble Court just deems fit and proper in the facts and circumstances of the instant case may kindly also be granted in favour of the plaintiff and against the defendant in the interest of justice.”

6. During the pendency of the suit, the respondent, as the defendant in the suit, moved an application under Order VII Rule 11¹ of the CPC, seeking rejection of the suit as barred by time.

7. By order dated 31st August 2015, the learned ADJ partly allowed the application of the respondent under Order VII Rule 11¹, which rejected the plaint qua the relief of specific performance and allowed the plaint to continue insofar as it sought injunctive relief.

8. The petitioners-plaintiffs moved an application before the learned ADJ, seeking review of the aforesaid order dated 31st August 2015.

9. The impugned order dated 7th June 2022 rejects the review application both on limitation as well as on merit.

10. Insofar as the rejection of the review application on limitation is concerned, Mr. Abhishek Kumar, learned Counsel for the petitioners has pointed out that, assailing the order dated 31st August 2015, the petitioners had moved this Court by way of CM(M) 866/2019 which was disposed of on 28th May 2019 and it was thereafter that the petitioners moved the application for review.



11. Mr. Ankur Mahindro, learned Counsel for the respondent, does not seriously contest the aspect of limitation in moving the review application. Accordingly, this Court does not intend to interfere with the order on that score.

12. On merits, the learned ADJ has not addressed the contention of the petitioners that the plaint of the petitioners could not have been rejected in part. Rather, the learned ADJ proceeds to hold that, if the order dated 31st August 2015 required review, it was to the extent that it allowed the plaint to continue so far as the relief of injunction was concerned. Accordingly, the learned ADJ has proceeded to frame the following issue, while rejecting the petitioners' review petition:

“(i) Whether the present suit may continue for the consequential reliefs of injunctions in view of the rejection of plaint vide order dated 31.08.2015, qua the main relief of specific performance?”

13. It appears fairly obvious that the manner in which the learned ADJ has proceeded to deal with the review petition cannot sustain in law. The main contention advanced by the petitioners, to the extent that the order dated 31st August 2015, under review, was erroneous as it had rejected the plaint in part, which was impermissible in law, has not been considered by the learned ADJ at all. Rather, the learned ADJ proceeds to frame an issue whereby the plaint could be rejected as a whole. The order dated 31st August 2015 had never been challenged by the respondent. The petitioner could not be placed in a worse situation than it was after the passing of the order dated 31st



August 2015 merely because it chose to file a review thereof. At the highest, therefore, in my opinion, the learned ADJ could have dismissed the review petition, if she found it to be without merit, she could not have proceeded to hold that the plaint itself should have been dismissed as a whole and frame an issue to that end.

14. Mr. Mahindro, in this context, drew my attention to Order XIV Rule 5 of the CPC, which reads thus:

“ORDER XIV

Settlement of issues and determination of suit on issues of law or on issues agreed upon

5. Power to amend and strike out, issues—

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

15. Order XIV Rule 5 of the CPC, in my considered opinion, cannot apply in the peculiar facts of the present case. No doubt, at any point of time during trial, additional issues may be framed by the trial court. That, however, is not the position which obtains in the present case. The learned ADJ was seized with a review application filed by the petitioners-plaintiffs against part rejection of their plaint. The order, on which the plaintiffs sought review, rejected plaintiffs’ plaint qua



the relief of specific performance as barred by time and allowed the plaintiff to continue qua the relief of injunction.

16. The plaintiffs, in the review application, questioned the said order on various grounds, including the ground that the learned ADJ could not have rejected the plaintiff in part. Without addressing the issue of whether the learned ADJ could in fact have rejected the plaintiff for the relief of specific performance in part and allowed the plaintiff to continue for the relief of injunction, the learned ADJ has effectively sought to cure the defect in the order dated 31st August 2015 by framing an additional issue which could empower dismissal of the suit as a whole. This, in my considered opinion, she could not have done while adjudicating on the petitioners' review application.

17. I hasten to add, at this juncture, that I am not examining the issue of whether the suit instituted by the petitioners was liable to be dismissed as a whole, or not liable to be so dismissed. The only two issues before this Court in the present case are whether (i) the order dated 31st August 2015 could sustain, insofar as it rejected the petitioner's plaintiff in part and (ii) whether the impugned order dated 7th June 2022, rejecting the review application thereagainst, could sustain, especially to the extent it framed an additional issue empowering rejection of the plaintiff as a whole. That, as I have already held, was impermissible in law.

18. Adverting, now, to the issue of whether the order dated 31st August 2015 which rejected the petitioner's application in part, was



sustainable in law, Mr. Abhishek Kumar has placed reliance on the judgments of the Supreme Court in *Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd.*².

19. The Supreme Court was, in the said case, squarely seized with this issue. Paras 3 to 9 of the report in the said decision merit reproduction, *in extenso*, thus:

“**3.** In our view, the impugned judgment is wrong on principle. Order VII Rule 11 of the Code of Civil Procedure, 1908 which reads as follows:

“**11. Rejection of plaint.**—The plaint shall be rejected in the following cases—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

² (2018) 11 SCC 780



Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

What is important to remember is that the provision refers to the “plaint” which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a suit from proceeding.

4. It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In **Maqsood Ahmad v. Mathra Datt & Co**³, the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms: (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

“4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code.”

5. Similarly, in **Bansi Lal v. Som Parkash**⁴ the High Court held : (AIR p. 39, para 7)

“7. But the real question which arises in this appeal is whether there can be a partial rejection of the plaint. Mr Chiranjiva Lal Aggarwala submits that a plaint can either be rejected as a whole or not at all, and he has

³ 1936 SCC OnLine Lah 337

⁴ AIR 1952 Punj 38,



relied on a statement of the law given in *Mulla's Civil Procedure Code* at p. 612 where it is stated: "This rule (Order 7 Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on *Raghubans Puri v. Jyotis Swarupa*⁵, *Venkata Rangiah Appa Rao v. Secy. of State*⁶, and *Maqsud Ahmad*³. In reply to this argument Mr Puri has submitted that it is really five suits which had all been combined in one and therefore in this particular case the rejection of a part was nothing more than rejection of three plaints. But the suit was brought on one plaint and not five suits were brought. *The law does not change merely because the plaintiff chooses in one suit to combine several causes of action against several defendants which the law allows him. It still remains one plaint and therefore rejection of the plaint must be as a whole and not as to a part.* I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore be allowed and the rule made absolute, and I order accordingly."

6. In *Venkata Rangiah Appa Rao*⁶, the Madras High Court held : (AIR p. 176 : SCC OnLine Mad)

"... Referring to Section 54 of the old Civil Procedure Code, the learned Judges state that that section only provides for the rejection of a plaint in the event of any matters specified in that section not being complied with and it does not justify the rejection of any particular portion of a plaint. Section 54 now corresponds to Order 7 Rule 11 of the Civil Procedure Code. The plain meaning of that rule seems to be that if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. Non-compliance with the requisites of Section 80 of the Civil Procedure Code,

⁵ ILR (1906-07) 29 All 325

⁶ 1930 SCC OnLine Mad 123



was taken to be a ground covered by clause (d) of Rule 11, above referred to. Even if it should be taken that that clause does not strictly apply to the present case, I must hold that the suits are liable to dismissal on account of non-compliance with Section 80 of the Civil Procedure Code.”

It was further found that if the suit was dismissed for want of notice against the Government under Section 80 CPC, it cannot be allowed to proceed against the other defendants for the reason that the Government's right to resume inam lands, on the facts of that case, stands unaffected, and that being so, the plaintiff's claim to recover possession of such lands from other defendants would also fall to the ground for the simple reason that they have no right then to resume those inams. It was, therefore, held on the peculiar facts of that case that for the reasons given the suit would fail as a whole.

7. However, in *Kalapu Pala Subrahmanayam v. Tiguti Venkata Peddiraju*⁷, a Single Judge referred to *Venkata Rangiah Appa Rao*⁶, and then held that the suit was barred by time in respect of only certain items of property and not in respect of others. *Despite this, it was held that since the plaint as a whole should have been rejected, the baby was thrown out with the bathwater, and the entirety of the plaint and not merely the properties against which the suit could not proceed (as it was barred by limitation), was rejected.*

8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. *This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no*

⁷ 1970 SCC OnLine AP 30



application at all, and the suit as a whole must then proceed to trial.

9. *If only a portion of the plaint, as opposed to the plaint as a whole is to be struck out, Order 6 Rule 16 CPC would apply.* Order 6 Rule 16 states as follows:

“16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

It is clear that Order 6 Rule 16 would not apply in the facts of the present case. There is no plea or averment to the effect that, as against the Directors, pleadings should be struck out on the ground that they are unnecessary, scandalous, frivolous, vexatious or that they may otherwise tend to prejudice, embarrass or delay the fair trial of the suit or that it is otherwise an abuse of the process of the court.”

(Emphasis supplied)

20. The enunciation of the law in *Sejal Glass Ltd*² is clear and unequivocal. The Supreme Court has held, in no uncertain terms, that that Order VII Rule 11¹ of the CPC permits is rejection of a plaint. It does not even obliquely envisage rejection of plaint in part. The plaint has, therefore, either to be allowed to be continued as a whole or rejected as a whole. Part rejection of a plaint, on any ground whatsoever, is completely impermissible, as per the law enunciated in *Sejal Glass Ltd*².



21. Mr. Mahindro has invited my attention to two judgments of the Division Bench of this Court in *Dr. Zubair Ul Abidin v. Sameena Abidin*⁸ and *Santosh Mangla v. Chander Mohan*⁹, and the judgment of a learned Single Judge of this Court in *Rajan Singh v. Roshan*¹⁰.

22. None of these decisions can be taken into account, in view of the law laid down in *Sejal Glass Ltd*².

23. *Dr. Zubair Ul Abidin*⁸ and *Santosh Mangla*⁹ were judgments rendered prior to *Sejal Glass Ltd*².

24. The principle, enunciated in the said decisions, to the effect that if a suit was predicated on more than one cause of action, and if the suit was liable to be rejected qua a particular cause of action, it could continue to be prosecuted qua the remaining cause of action has specifically been raised and rejected by the Supreme Court in *Sejal Glass Ltd*², relying, *inter alia*, for the purpose, on the judgment of the High Court of Punjab and Haryana in *Bansi Lal*⁴.

25. *Rajan Singh*¹⁰ was not a case which arose under Order VII Rule 11¹ and cannot, therefore, be of any use in the present case.

26. To my mind, in fact, the plain wording of Order VII Rule 11¹ does not admit of two interpretations. The CPC has to be read as it

⁸ 2014 214 DLT 340 (DB)

⁹ Judgment dt. 31st May 2002 in RFA 196/2001

¹⁰ Judgment dated 12th February 2020 in CS(OS) 603/2019



stands. It is not permissible for a court to strain every sinews in trying to accord, to the CPC, in interpretation which appears to be most appropriate.

27. The opening words of Order VII Rule 11¹ of the CPC states “the plaint shall be rejected”. This expression, in my view, does not admit of two interpretations.

28. If it is said that a plaint is rejected, it is rejected as a whole. When a plaint is said to have been rejected, it amounts to a dismissal of the suit; nothing more, nothing less. It is completely impermissible, to read, into Section 11 of the CPC, part rejection of a plaint. That would, in fact, amount to judicial legislation which, it is trite, is not permissible in law¹¹.

29. For the aforesaid reasons, a clear case existed for reviewing the order dated 31st August 2015, as it suffers from a transparent error of law apparent on its face. The impugned order dated 7th June 2022, for all these reasons, cannot sustain. It is accordingly, quashed and set aside.

30. The learned trial court is requested to decide this matter as expeditiously as possible.

31. It is clarified, once again, that this Court has not expressed any

¹¹ *Sushil Kumar Sharma v. UOI*, (2005) 6 SCC 281; *State of Kerala v. P. V. Neelakandan Nair*, (2005) 5 SCC 561; *Trutuf Safety Glass Industries v. Commissioner of Sales Tax, U.P.*, (2007) 7 SCC 242; *Padma Sundara Rao v. State of T.N.*, (2002) 3 SCC 533; *Dr. Ashwani Kumar v. UOI*, (2020) 13 SCC 585



view on the merits of the suit filed by the petitioner or as to whether any ground for dismissal of the suit as a whole exists or does not exist. That question is left open.

32. The petition is accordingly allowed to the aforesaid extent, with no order as to costs.

C. HARI SHANKAR, J.

SEPTEMBER 27, 2022

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