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

% *Date of Decision: 07th December, 2022*

+ C.R.P. 200/2022

ROHIT MADAN

..... Petitioner

Through: Mr. Avneesh Garg and
Mr. Akshay Ravi, Advocates with
Petitioner-in-person.

versus

ADITYA MADAN & ANR.

..... Respondents

Through: Mr. Vikas Aggarwal, Advocate
for R-1 with R-1-in-person.

Mr. Piyush Beriwal, Mr. Sahaj Garg and
Ms. Divya Srivastava, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 53073/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 200/2022 & CM APPL. 53072/2022 (stay)

3. Present revision petition has been filed under Section 115 read with Section 151 CPC for setting aside the impugned order dated 23.09.2022, passed by the learned Trial Court, whereby the application filed by the Petitioner under Order VII Rule 11 CPC, has been dismissed. Petitioner herein is a Defendant in the suit and Respondent No.1 is the Plaintiff. Parties are hereinafter referred to by their litigating status before this Court.

4. The short narrative of facts to the extent necessary and relevant, shorn of unnecessary details, is that Respondent No.1 filed a suit for recovery of damages of Rs.1,64,51,425/- against the Petitioner. Case set up in the plaint is that Petitioner is the real younger brother of Respondent No.1 and in or around 2016, Petitioner desired to purchase a property being apartment No.7-B, Strawberry Hill Avenue, Stanford, since he was in U.S.A. Respondent No.1 was also keen that his younger brother settled down in life and since Petitioner was short of funds, with a view to help him financially, Respondent No.1 advanced a loan to the tune of Rs.21,60,000/- on 20.09.2016 and a further sum of Rs.1,05,00,000/- on 28.11.2016 by way of bank transfer, which is duly reflected in the statements of account of the Respondent No.1. However, out of love and affection, Respondent No.1 agreed that only Rs.78,00,000/- would be treated as a loan and an Agreement was executed to this effect, recording the modalities for return of the loan.

5. It is the case of Respondent No.1 before the Trial Court that the Agreement clearly records that Petitioner would be liable to pay Rs.78,00,000/-, at the then conversion rate of Rs.65/- per dollar along with interest @ 5.5% per annum calculated w.e.f. 01.04.2017 till realisation, with a caveat that Petitioner would be free to return the outstanding amount at any point of time. Since the amount was not paid by the Petitioner, despite sufficient funds being available, as reflected from his income tax returns, it was again agreed between the parties that Petitioner would be liable to return the original amounts advanced to him as loan and this is admitted by the Petitioner in a written communication dated 29.11.2019. The money advanced to the Petitioner was, however, not paid to Respondent No.1 despite various requests and his suffering from various medical ailments.

6. Petitioner filed an application under Order VII Rule 11 CPC, for rejection of the plaint, predicated on clause 2 of the Loan Agreement between the parties, whereby according to the Petitioner, it was agreed that the loan advanced to the Petitioner would be returned to Respondent No.1, as and when both parties decide to settle their inheritance from the joint family properties/inheritance from their parents, including but not limited to property bearing No.S-496, Greater Kailash-I, New Delhi, in which both parties have an undivided 1/3rd share each. Reliance was also placed on clause 3 of the Agreement. Clause 2 of the Agreement reads as follows:

“2. That both the parties have agreed that the aforesaid amount shall be returned by the Second Party to the First Party as and when both the parties decide to “settle their inheritance from the joint family properties / inheritance from the parents”, including but not limited to house property bearing No. S-496, Greater Kailash, Part-I, New Delhi in which both the parties have undivided 1/3rd share each along with their other brother Shobit Madan in terms of the registered Wills executed by their parents namely Shri Arun Madan and Smt. Kanta Madan.”

7. The Trial Court dismissed the application and relevant part of the impugned order is as under:

“Perusal of the clause 2 of the agreement dated 16.04.2018 as aforesaid reflects that the amount in question shall be returned by the second party i.e. defendant herein, as and when both the parties decide to settle their inheritance. A plain reading of the clause 2 reflects that the cause of action occurs when the parties decide to settle.

It means when the parties take any step towards the settlement. It does not say that when the parties settle the inheritance. Be that as it may, once the plaintiff has already placed on record the mediation settlement dated 09.04.2022, it cannot be said that there is no basis to file the plaint. The documents relied upon by the plaintiff clearly shows that there is a cause of action in favour of the plaintiff and against the defendant. The observations of the Hon’ble High Court in order dated 07.07.2022 is to be seen in that light. Therefore, in my considered opinion, no case is made out for either ejecting or dismissal of the suit.”

8. Learned counsel appearing on behalf of Respondent No.1, on advance copy of the petition, at the outset, submits that the suit is at

the stage of evidence and Respondent No.1 has been examined as PW-1 and two summoned witnesses have to be examined by the Local Commissioner today i.e. 07.12.2022. Without prejudice to the contention that there is no merit in the application under Order VII Rule 11 CPC, it is the case of Respondent No.1 that at this belated stage, when the evidence has commenced, this Court should not interfere in the impugned order, dismissing the application under Order VII Rule 11 CPC. It is further submitted that Respondent No.1 has set out a cause of action in the plaint and seen on a mere demurrer, no case for rejection of the plaint is made out.

9. Learned counsel for the Petitioner argues that the plaint discloses no cause of action and the suit is premature as the cause of action, if any, in favour of Respondent No. 1 would arise only when parties settle their entire inheritance. Trial Court has thus erred in dismissing the application.

10. I have heard learned counsels for the parties and perused the averments in the plaint as well as the impugned order.

11. The impugned order passed by the Trial Court dismisses an application filed by the Petitioner under Order VII Rule 11 CPC. It is a settled law that remedy under the said provision is a special remedy, where the Court is empowered to dismiss the suit at the threshold without conducting a trial and recording evidence, if it is satisfied that the plaint can be rejected under any provision of Order VII Rule 11 CPC. The underlying object is that if the Plaintiff files a suit which discloses no cause of action or suffers from any other disability under Rule 11 of Order VII CPC, then the litigation must be put to an end at the threshold instead of permitting the Plaintiff to unnecessarily protract litigation so that the Defendant is saved from the turmoil of litigation and judicial time is not wasted. In *Azhar Hussain vs. Rajiv*

Gandhi, 1986 Supp SCC 315, it was held by the Supreme Court that the whole purpose of conferment of powers under this provision is to ensure that litigation, which is meaningless and bound to prove abortive, should not be permitted to waste judicial time of the Court. At the same time, it is also settled that for deciding an application under Order VII Rule 11 CPC, Court is required to examine the plaint on a mere demurrer and see if it discloses a cause of action, which is triable by the Court and the test is to see if the averments in the plaint, taken in entirety in conjunction with the documents relied upon, would result in a decree being passed. In **Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512**, the Supreme Court has held as under:

“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.”

12. In applying the aforesaid test, it is not permissible to cull out a sentence or a passage and read the same in isolation. It is the substance not the form which has to be looked into without any additions or subtractions. [Ref.: **Hardesh Ores (P) Ltd. v. Hede and Company, (2007) 5 SCC 614**].

13. The other facet which is equally important is that the Court cannot base its adjudication on the defence set up by the Defendant in the suit and in this context, I may allude to the judgment in **M/s. RSPL Limited v. Mukesh Sharma and Another, 2016 SCC OnLine Del 4285**, relevant para of which is as follows:

“27. Coming back to the facts of the present case, the plaintiff/appellant in paragraph 36 set out the nature of the cause of action, namely, the defendants/respondents were engaged in providing services under the impugned trade name ‘GHARI TRADEMARK COMPANY’. In paragraph 37 of the plaint, it has been averred, first of all, that this Court has the territorial

jurisdiction to try and adjudicate the present suit. But, this by itself, would not be sufficient because merely quoting the words of a section or the ingredients of a provision like the chanting of a mantra would not amount to stating material facts as noted by the Supreme Court in Hari Shanker Jain (supra). The material facts would, inter alia, have to include positive statement of facts. In the present case, paragraph 37 of the plaint contains the positive statement of fact that the defendants are committing the impugned acts within the jurisdiction of this Court by 'conducting, soliciting, rendering the impugned services under the impugned trade name'. Further statements are made in the very same paragraph that the plaintiff has its corporate office in Delhi and carries out its business activity in Delhi under its trade mark/label through its dealers/distributors located in Delhi. A specific averment has also been made that the plaintiff's goodwill and reputation is being tarnished by the alleged activities of the defendants, particularly in North-East Delhi as also in other parts of the country and that the plaintiff/appellant's proprietary rights are being prejudicially affected in the Delhi area due to the said activities. While considering an application under Order 7 Rule 10 CPC, these statements would have to be taken as correct. This would mean that this Court would have jurisdiction to try and adjudicate the present suit by virtue of Section 134(2) of the Trade Marks Act, 1999 read with Section 20 CPC. The material fact that has been pleaded by the plaintiff is that the defendants/respondents are conducting, soliciting, rendering the impugned services under the trade name - GHARI TRADEMARK COMPANY - within the jurisdiction of this Court. In case the defendants/respondents deny this averment (as they have done in their written statement but, which cannot be looked into at the stage of Order 7 Rule 10 CPC), the issue would arise as to whether the respondents/defendants are conducting, soliciting, rendering the impugned services under the trade name- GHARI TRADEMARK COMPANY-within the jurisdiction of this Court? Obviously, the onus of proof would lie on the appellant/plaintiff and at the stage of trial, evidence would have to be placed to substantiate this plea. But, at this stage, in our view, it is not necessary as Lord Denman, C.J. in Williams v. Wilcox (supra), to set out the subordinate facts which are the means of proving the material fact or the evidence to sustain the allegation contained in the material fact. We, therefore, do not agree with the view taken by the learned Single Judge that the plaint is bereft of any particulars with regard to territorial jurisdiction. We may observe that the learned Single Judge has also looked at the written statement and even at the replication in the course of arriving at his decision. This, in the context of an Order 7 Rule 10 CPC application, cannot be done as already pointed out by us above. Taking the objection of territorial jurisdiction raised in the Order 7 Rule 10 CPC application, by way of a demurrer, as it must, the facts pleaded by the appellant/plaintiff must be taken to be true. Therefore, if we take the statement of the appellant/plaintiff in paragraph 37 to the effect that the defendants/respondents are

committing the impugned acts within the jurisdiction of this Court by conducting, soliciting, rendering the impugned services under the impugned trade name to be correct, then, it follows that this Court would have to proceed with the trial of the suit and cannot return the plaint under Order 7 Rule 10 CPC.”

14. From the averments in the application under Order VII Rule 11 CPC, it is evincible that the only ground, on which the application is predicated, is that in view of clauses 2 and 3 of the Loan Agreement, relied upon by Respondent No.1 himself, occasion for the Petitioner to return the outstanding amount of loan had not arisen, as that stage would arise only once the inheritance of Respondent No.1 is settled with the Petitioner and the third brother namely, Mr. Shobhit Madan. Even today, the argument of the Petitioner is restricted to the said issue and it is contended that in the entire plaint, there is no averment how clause 2 of the Loan Agreement stood satisfied before filing of the suit. Learned counsel for the Petitioner submits that the plaint does not disclose that the entire joint family properties of the parties stand settled by way of inheritance in favour of the three brothers as envisaged in the Loan Agreement in question, which was a mandatory pre-requisite, enabling Respondent No.1 to claim the payment of loan and therefore, the plaint is devoid of any cause of action. Though subtly, it is also urged that looking at the dollar rate as on 16.04.2018, the date on which the purported agreement was executed, there are contradictions between the amounts mentioned in the Agreement and the plaint.

15. On perusal of the plaint, which is on record, this Court finds that Respondent No.1 has in the plaint given the narrative and background for which the loan was advanced to the Petitioner, who is admittedly his younger real brother. It is also set out that Loan Agreement was executed between the parties wherein the modalities for return of the loan were also recorded. Agreement is a Relied Upon

Document, along with the plaint. Reference is also made to a suit being **CS(OS) No. 129/2022**, filed by the Petitioner in this Court, where pursuant to mediation between the parties, an oral family agreement was recorded on 09.04.2022, pertaining to the property at Greater Kailash, as aforementioned. It is averred that cause of action arose when the loan was advanced by Respondent No.1, on two occasions in 2016, by way of a bank transfer and the transaction is reflected in the statements of accounts of Respondent No.1. Plaint also contains an averment that on scrutiny of the account of the Petitioner by the Income Tax Department, it was found that he had sufficient funds to return the loan and accordingly, Petitioner had agreed that he would return the entire loan amount with interest and in fact, Petitioner had by a written communication dated 29.11.2019, confirmed having taken a loan of Rs.1,05,00,000/- and Rs.21,60,000/- from Respondent No.1, pursuant to assessment proceedings under Section 143(3) of the Income Tax Act.

16. Trial Court has on a perusal of the plaint and clause 2 of the Loan Agreement, come to a conclusion that the plaint along with the documents discloses a cause of action and it is not a case where it can be rejected at the threshold.

17. This Court entirely agrees with the observations of the Trial Court. Seen on a plain demurrer of the plaint along with the documents filed with the plaint and following the law laid down that the averments made in the plaint have to be assumed to be correct, it is not permissible at this stage to look into the defence set up by the Petitioner. The plea of the Petitioner that the entire inheritance of the parties has not been settled and there is only a vague reference in the plaint to an oral family settlement, which too was never effectively entered between the stakeholders in a suit before this Court, in my

view, cannot be a ground to reject the plaint at the threshold. The other plea disputing the total sum advanced to the Petitioner by way of loan and/or the dollar rate of conversion is also not tenable at the stage of examining the application under Order VII Rule 11 CPC. These are disputed questions which can only be decided on evidence during trial. In this context, this Court draws strength from the judgment of the Supreme Court in ***Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510***, relevant para of which is as follows:

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

18. Applying the aforesaid law and testing the plaint on a demurrer along with Loan Agreement appended thereto, this Court is unable to disagree with the Trial Court’s finding that the plaint discloses a cause of action. Moreover, Respondent No. 1 has rightly pointed out that the suit is at the stage of trial and must not be interdicted at this stage.

19. Learned counsel for the Petitioner raises another plea, which *albeit* is extraneous to the application under Order VII Rule 11 CPC, that the Trial Court has interpreted clause 2 of the Agreement to hold that the parties intended that the loan amount shall be returned by the Petitioner to Respondent No.1 as and when both parties ‘decide to settle’ their inheritance and that the Agreement does not reflect that the intention was to postpone any action for recovery of the amount when the parties ‘settled the inheritance’. This finding, according to the Petitioner, will prejudice his case at the stage of final adjudication of the suit.

20. In my view, the apprehension of the Petitioner is without any basis, as this is only a *prima facie* finding for the purpose of deciding

the application under Order VII Rule 11 CPC. However, in order to allay any apprehension of the Petitioner, it is made clear that the interpretation given by the Trial Court to clause 2 of the Loan Agreement is only *prima facie* and will not come in the way of the parties at the stage of final adjudication of the suit.

21. There is no infirmity in the impugned order, requiring interference by this Court.

22. Revision petition along with pending application is accordingly disposed of, in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 07, 2022/shivam

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