



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

% **Date of order : 22nd August 2023**

C.R.P. 255/2018

+ **OUTLOOK PUBLISHING (INDIA) PVT LTD** Petitioner
Through: Ms. Nisha Bhambhani and Mr. Siddharth Yadav, Advocates

versus

GAURAV JAIN Respondent
Through: In person.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner has filed the present petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking the following reliefs:

"a) Set aside the order dated 09.10.2018 in Civil Suit No.727/17 titled 'Gaurav Jain Versus Outlook Publishing (India) Pvt. Ltd.passed by ADJ-05, South, Saket, New Delhi;

b) Pass such further order(s) as this Hon'ble Court deems fit and proper."

2. The petitioner/defendant is a publishing house involved in operating



various businesses, including a website under the domain name 'www.outlookindia.com'. The respondent/plaintiff had written articles to be published on the petitioner's website from 20th March 2014, to 15th May 2014. Thereafter, several communications were exchanged between the parties wherein, the respondent had requested the petitioner to release the pending payment towards the work done by him for the petitioner.

3. The respondent, being aggrieved by the non-payment, filed a recovery suit bearing No. 727/2017, on 10th August 2017, against the petitioner. The petitioner sought Rs.82,500/-, towards the work done by him and Rs.4,12,500/-, allegedly for the damages inflicted by the petitioner upon the respondent by way of causing mental agony and suffering.

4. In the above said recovery suit, the petitioner moved an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint of the respondent on the ground of lack of cause of action and being time barred.

5. The application of the petitioner was dismissed *vide* the impugned order dated 9th October 2018, in the suit bearing No. 727/2017, passed by the learned ADJ, South, Saket, New Delhi. Hence, the petitioner has filed the instant petition.

6. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court had passed the impugned order without considering the entirety of the matter and has failed to take into account that the suit for recovery filed by the respondent lacks cause of action and is also barred by the law.

7. It is submitted that the learned Court below failed to appreciate the



fact that article of the respondent was admittedly published on the website of the petitioner on 15th May 2014. However, the suit for recovery was filed on 10th August 2017. In view of the same, it is clear that the said suit was filed beyond the prescribed period of three years as per the Limitation Act, 1963. Hence, the same should be rejected for being barred by the limitation.

8. It is submitted that provisions of the Limitation Act, 1963, have to be applied strictly and the limitation for the alleged work done has to be reckoned from the date when the work was completed i.e., 15th May 2014.

9. It is submitted that no damages can be awarded for injury to the respondent's feelings or his mental distress, anguish, annoyance caused by the breach of contract until and unless the purpose of the contract was to provide peace of mind or freedom of distress.

10. It is also submitted that the learned Trial Court failed to take into consideration that in the instant matter, the respondent only wrote articles that appeared on the website of the petitioner, the purpose of which was not to provide peace of mind or freedom from distress to the respondent.

11. It is further submitted that, in view of the above, the claim of damages for the alleged breach of a contract resulting in the mental agony and suffering does not arise and hence, claiming the same is an abuse of the process of law.

12. It is submitted that the respondent failed to justify the alleged damages to the tune of Rs.3,30,000/- for the alleged mental suffering either in his plaint or anywhere in the documents annexed by him.

13. It is submitted that the learned Trial Court has erroneously dismissed



the petitioner's application as the same is evident from the fact that the plaint of the respondent does not disclose any cause of action.

14. It is further submitted that the respondent had sent an email dated 14th July 2014 and 15th July 2014, whereby, he gave up his claim. Hence, due to the lack of cause of action, the plaint is barred by the law.

15. It is therefore, submitted that in view of the above said, the instant petition may be allowed and the impugned order dated 9th October 2018, be set aside.

16. *Per Contra*, the respondent appearing in person has vehemently opposed the instant petition and has denied the averments made on behalf of the petitioner.

17. It is submitted that the impugned order passed by the learned Trial Court is not erroneous as the same has been passed after proper adjudication of facts and circumstances of the case.

18. It is submitted that the cause of action arose when the petitioner breached the contract by not making the payment for which it was obligated to do so. The petitioner had made a promise to pay on 15th July 2014, which led the respondent to believe that the amount shall be paid.

19. It is submitted that the respondent waited for a reasonable period before assuming that the contract with the petitioner had been broken and consequently, the suit was filed.

20. It is submitted that the learned Trial Court has rightly held that despite the claim of recovery of money towards the work done by the respondent may be barred by limitation but the claim regarding the recovery of damages



is not, as the same was held to be continuous cause of action in view of the emails sent by the respondent on 10th February 2015, 12th February 2015, 19th February 2015, and 16th May 2015.

21. It is submitted that in view of the foregoing submissions, the instant petition being devoid of any merit is liable to be dismissed.

22. Heard learned counsel appearing on behalf of the petitioner and the respondent appearing in person. This Court has perused the records.

23. The respondent has filed the suit for recovery of money and damages to the tune of Rs. 4,12,500/- wherein Rs. 82500/- is being sought as price against the work done by the respondent for the petitioner and Rs. 3,30,000/- towards damages for harassment, disappointment, mental pain and sufferings.

24. It is the case of the petitioner that the said suit is on the face of it barred by the limitation period i.e., 3 years. The payment was due to be paid on 15th July 2014, and since the suit was filed on 10th August 2017, the plaint of the respondent is liable to be rejected. In view of the same an application under order VII Rule 11 of the CPC, was moved by the petitioner seeking rejection of the respondent's plaint on the ground that the said plaint is barred by the law. The respondent had contended before the learned Trial Court that he had waited for a reasonable period of time before assuming that there was a breach of contract on the part of the petitioner and the suit was filed only when there arose a cause of action.

25. The learned Trial Court dismissed the application of the petitioner made under Order VII Rule 11 of the CPC, while passing the impugned



order dated 9th October 2018. The relevant paragraph of the said order is reproduced herein:

“The instant suit is for recovery of Rs.4,12,500/- along with interest. Plaintiff is seeking recovery of Rs.82,500/- for payment of work done by him for the defendant and Rs.3,30,000/- towards damages for harassment, disappointment, mental pain and sufferings. Hence, it is clear from a reading of the plaint that the suit is not based merely upon recovery for the price of work done, but also for damages which allegedly was a continuous cause of action as per para no. 14, 15, 16 and 17 of the plaint. Though the claim for recovery of price of the work done by the plaintiff may be barred by limitation, the claim regarding recovery of damages is not. It is the settled law that a plaint cannot be rejected in part. Since the cause of action for damages alleged in the plaint does not appear to be barred by limitation, plaint cannot be rejected. The application under Order VII Rule 11 CPC is therefore dismissed and stands disposed off.”

26. Upon a bare perusal of the impugned order, it is observed that the learned Trial Court had dismissed the petitioner’s application seeking rejection of the respondent’s plaint on the ground that the reliefs sought therein include the recovery of money for the work done and for recovery of damages caused by the petitioner by inflicting mental pain, agony and sufferings. The learned Court below noted that the suit filed is not merely based upon the recovery of money.

27. It held that even though the claim for recovery of money may be barred by the limitation, the plaint could not be held to be rejected as the respondent had also sought the relief in regard to the recovery of damages



and the same was held to be a continuous cause of action by the learned Trial Court. Hence, as per the prohibition imposed by the law, that a plaint can only be rejected in whole and not in part, therefore, the plaint of the respondent cannot be rejected, since the cause of action for damages alleged in the plaint does not appear to be barred by limitation.

28. At this stage, this Court will go briefly revisit the scope and extent of the Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

29. It is a settled principle of law that if the erroneous decision by a subordinate court results in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and in such circumstances, the Court must exercise its revisional powers, but not otherwise. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

30. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201 and followed in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the trial court is erroneous due to a question of fact or of law



does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation that needs to be followed in its true letter and spirit. The High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.

31. This Court is of the view that the plea of the revisionist can only be held to be maintainable where it is found that if the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

32. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

33. At this juncture, this Court deems it necessary to discuss the relevant provisions of law laid down under the CPC and further contemplated in a catena of judgements, in regard to the grounds taken by the learned Trial Court while dismissing the petitioner's application.

34. In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, the Hon'ble Supreme Court settled the principle on the aspect of rejection of the plaint and observed that if on a meaningful, informal reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC, to adjudicate upon the grounds mentioned therein.



35. It is only where the plaint as a whole does not disclose a cause of action, that Order VII Rule 11 of the CPC, interdicts a suit from proceeding further. In ***Popat and Kotecha Property v. State Bank of India Staff Assn., (2005) 7 SCC 510***, which was recently reaffirmed in ***Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corpn., 2022 SCC OnLine SC 641***, the Hon'ble Supreme Court has culled out the legal ambit of Order VII Rule 11 of the CPC and held as under:

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

36. In the light of aforementioned judgment, it is evident that the stand with regard to the partial and whole rejection of a plaint has been reiterated and reaffirmed. The law particularly specifies that a plaint is a crucial part of the pleadings in a suit. The averments made in a plaint not only define the facts and the legal rights of a party affected thereto, but further conceptualise



the cause of action which is yet another crucial factor in a trial as the *locus standi* of the parties is accrued only in pursuant to the said cause of action.

37. It is deliberated that if a Court exercises its power by rejecting a plaint in part, it will have serious and unwarranted effect on the trial as there could be gross injustice to the party/parties. A plaint consists the description of various facts and circumstances along with the legal rights of a party in it. In the event that a plaint is read in part or in compartments, the contents thereto will have different meaning altogether in regard to the context and purpose for which the suit was filed. Therefore, the intention of the concerned party is to be gathered primarily from the tenor and terms of the pleadings taken as a whole and not in part.

38. In ***Roop Lal Sathi v. Nachhattar Singh Gill*, (1982) 3 SCC 487**, it was held by the Hon'ble Supreme Court that where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII Rule 11 of the CPC, but the rule does not justify the rejection of any particular portion of a plaint. On perusal of the rule, it is inferred that if any of the defects mentioned in the provision 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 rejection of the plaint in part.

39. The above said principle has also been discussed recently in ***Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, (2018) 11 SCC 780** and also in ***Madhav Prasad Aggarwal v. Axis Bank Ltd.*, (2019) 7 SCC 158**, wherein the Hon'ble Supreme Court has categorically held that under Order VII Rule 11 of the CPC, the power is limited to rejection of the plaint as a whole or



not at all. In the judgment of *Sejal Glass Ltd. (Supra)*, the Hon'ble Court observe as under:

“4. It is settled law that the plaint as a whole alone can be rejected under Order VII Rule 11. In Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] , 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 [Bansi Lal v. Som Parkash, AIR 1952 Punj 38] , 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 relied on a statement of the law given in Mulla's Civil Procedure Code at p. 612 where it is stated: “This rule (Order VII 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 [Raghubans Puri v. Jyotis Swarupa, ILR (1906-07) 29 All 325] , Venkata Rangiah Appa Rao v. Secy. of State [Venkata Rangiah Appa Rao v. Secy. of State, 1930 SCC OnLine Mad 123 : ILR 54 Mad



416 : AIR 1931 Mad 175] and Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021] 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 complaints. But the suit was brought on one complaint 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 complaint and therefore rejection of the complaint 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.”

40. This Court is of the view that as per the established principle of law when a Court considers a complaint liable to be rejected in respect of a part, it is incumbent on the Court to reject the complaint as a whole. The Court has no jurisdiction to reject the complaint in part and permit the suit to be continued with regard to the rest. The same has been laid down in a catena of judgments, some of which have been mentioned hereinabove.

41. Adverting to the facts of the instant case, it is observed that while dismissing the petitioner’s application under Order VII Rule 11 of the CPC, the learned Court below had referred to para Nos. 14, 15 16 and 17 of the



plaint of the respondent.

42. It is observed that the view taken by the learned Trial Court in regard to the cause of action to seek recovery of damages is due to the infliction of mental pain and harassment. The same was allegedly held to be a continuous cause of action, after taking into consideration various documents, such as, petitioner's request for recommendation letter *vide* emails dated 10th February 2015, 12th February 2015, and 19th February 2015, and further communication made by the respondent *vide* letter dated 16th May 2015.

43. Upon perusal of the above, it is evident that there has, allegedly, been a continuous cause of action to seek damages as mentioned herein above and the learned Trial Court has rightly followed the established legal principles.

44. The fundamental rule w.r.t to the rejection of a plaint is clear and unambiguous. As noted above, for rejection of a plaint, the adjudicating Court has to look only at the averments made in the plaint and if it is found on a simple reading of such averments, that the plaint deserves to be rejected, the Court is empowered to do so, but there is a precedence to the same. The Court while rejecting the said plaint is permitted to reject it as a whole and there cannot be a partial rejection of the plaint.

45. In the instant case, the learned Trial Court rightly observed that since the cause of action to seek recovery of money as against the price for the work done was due on 15th July 2015, and the suit having being filed on 10th August 2017, the suit may be barred by the limitation. But due to the rider imposed by way of deliberations in a catena of judgments, the plaint has to be rejected as a whole.



46. This Court is of the view that the learned Trial Court has exercised the jurisdiction imposed upon it while adjudicating upon the application made under Order VII Rule 11 of the CPC. It has rightly followed the fundamentals ascribed with regard to the conditions which are required to be considered such as the rejection of plaint as a whole.

47. Therefore, it is held that, no case of revision as defined under Section 115 of the CPC, has been made out by the petitioners as no such cause exists wherein the learned Trial Court has failed to exercise its jurisdiction as per law. The learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity.

48. In view of the above discussions of facts and law it is, hereby, held that there is no error on the part of the learned Trial Court in dismissing the application under Order VII Rule 11 of the CPC, filed by the petitioner. The learned Trial Court has correctly passed the impugned order by stating that, to decide the application of the petitioner for rejection of the plaint, it will have to reject the plaint in portion i.e., only in regard to the recovery of money against the work done. The same cannot be held to be tenable as the cause of action to seek recovery of the said money may be barred by the limitation but at the same time, the cause of action for recovery of damages is within the limitation period. Since, there can be no partial rejection of a plaint, the said application cannot be decided and hence, it was dismissed.

49. The petitioner has failed to make its case to seek revision and in absence of any infirmity in the exercise of jurisdiction by the learned Court below, the impugned order dated 15th April 2023, passed by the learned Trial



Court, Central District, Tis Hazari Court, Delhi, in Civil Suit bearing No. 424/2020, is hereby upheld.

50. Accordingly, the instant petition stands dismissed.
51. Pending applications, if any, also stand dismissed.
52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 22, 2023
SV/RYP

Click here to check corrigendum, if any