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

% *Date of Decision: 03rd February, 2023*

+ C.R.P. 9/2023

KUMKUM BHARDWAJ

..... Petitioner

Through: Mr. Anurag Ojha, Mr. Deepak
Somani and Ms. Chanchal Gupta,
Advocates.

versus

SHASHI KIRAN KAPOOR & ORS.

..... Respondents

Through: Mr. Rashid Hussain, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. No. 1478/2023 (exemption)

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

**C.R.P. 9/2023 & C.M. No.1477/2023 (Interim relief) & 3947/2023
(for urgent hearing)**

3. Present Revision Petition has been filed laying a challenge to two orders passed by the Trial Court i.e. 08.08.2022 and consequential order dated 12.09.2022. By order dated 08.08.2022, the Trial Court has dismissed the application under Order 7 Rule 11 CPC filed by the Defendant and by order dated 12.09.2022, the Trial Court has struck off the defence of the Defendant on ground of non-compliance of the directions passed in the order dated 08.08.2022 with respect to payment of arrears of rent from date of filing of the suit i.e. 26.10.2021 till the date of the order within a month from the date of

the order, failing which the Defendant was liable to pay penal interest with a further direction that the defence shall be struck off. Parties are hereinafter referred to by their litigating status before the Trial Court for the purpose of this judgment.

4. Briefly put, the case of the Plaintiffs before the Trial Court is that they have inherited the property bearing Flat No.4, land measuring 1600 Sq. ft. and covered area 1400 Sq. ft. built on Plot No.2, Taj Apartments, Rao Tularam Marg, Sector-12, R.K. Puram (hereinafter referred to as the “suit property”), from their deceased father Sh. Satpal Kapoor. It is also their case that the Plaintiffs appointed Shri Rahul Kapoor S/o Late Sh. Krishan Lal Kapoor as their true and lawful power of attorney and the suit property was let out to the Defendant *vide* Lease Agreement dated 01.02.2021, which was duly registered on 11.02.2021, for a period of three years on a monthly rent of Rs.50,000/- and payable in advance on or before 7th day of each English calendar month. Plaintiffs further claimed that the Defendant failed to pay the rent and certain cheques given by the Defendant were dishonoured, pursuant to which a legal notice dated 16.06.2021 was sent, which was duly received by the Defendant. By the said notice, Defendant was called upon not only to pay the arrears of rent but also to hand over the vacant and peaceful possession of the suit property, on expiry of the notice period.

5. On being served with summons, Defendant filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint at the threshold. Plea of the Defendant in the application was that no cause of action has arisen in favour of the Plaintiffs as they are not the owners/landlords of the suit property. At the time of execution of the Lease Agreement dated 01.02.2021, Sh. Rahul Kapoor claimed himself to be the absolute owner and in possession of the suit property

and thus the Plaintiffs have no legal right to institute the present suit for possession, recovery of rent arrears or permanent injunction.

6. After hearing the parties, the Trial Court by the impugned order dismissed the application under Order 7 Rule 11 CPC on the ground that the plaint read as a whole discloses cause of action in favour of the Plaintiffs. Plaintiffs have averred that they acquired right, title and interest in the suit property on the death of their father and nominated Sh. Rahul Kapoor as their attorney. The Trial Court has also observed that the Defendant is enjoying the premises without paying rent since March, 2021 and despite the order of the Court dated 27.05.2022, failed to appear before the Court on two dates.

7. Having heard the learned counsels for the parties and having examined the impugned order in light of the settled law for deciding an application under Order 7 Rule 11 CPC, this Court finds no infirmity in the impugned order dated 08.08.2022. It is a settled law that while examining an application under Order 7 Rule 11 CPC, the Court is only required to see the plaint on a mere demurer and the documents filed along with plaint. The Court is not to look into the defence set up by the Defendant or delve into disputed questions of fact. The plaint has been placed on record and from perusal of the same, it is evident that Plaintiffs have clearly averred that the Plaintiffs are three sisters and have inherited the suit property from their deceased father being the legal heirs. On this basis, ownership of the suit property has been claimed. It is also averred that Plaintiffs appointed Shri Rahul Kapoor as their true and lawful Attorney and that the suit property was leased by the Plaintiffs through their Attorney to the Defendant by a Lease Agreement which was duly registered on 11.02.2021. It is also stated in the plaint that Lease Agreement was for a period of three years at a monthly rent of

Rs.50,000/- for the first year which is to increase during the next two years. Therefore, when the plaint is read holistically and meaningfully, it cannot be said that the Plaintiffs have been unable to make out a cause of action in their favour and the plaint deserves to be rejected at this stage. The Supreme Court has time and again affirmed and reiterated the principles applicable to an application under Order 7 Rule 11 and I may refer to the following judgments:-

- (i) In ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706***, the Court held as follows:-

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

- (ii) In ***Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137***, the Supreme Court held as under:-

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)”

(iii) In ***Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017)***

13 SCC 174, where the Supreme Court observed as follows:-

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

8. In view of the aforementioned judgments and averments in the plaint, this Court finds no infirmity in the impugned order rejecting the application under Order 7 Rule 11 CPC.

9. At this stage, learned counsel for the Defendant submits that Defendant would be satisfied if the order dated 12.09.2022 is set aside whereby the defence of the Defendant has been struck off for non-compliance of the directions of the Court passed in the order dated 08.08.2022. Defendant who is present in Court offers to pay 50% of the arrears of rent directed by the Trial Court within a period of three months and further undertakes to vacate the suit property on or before

the expiry of three months from today. It is however stated that the offer to pay the arrears of rent is without prejudice to the rights and contentions of the Defendant before the Trial Court.

10. The undertaking given by the Defendant to vacate the suit property within three months from today is taken on record and an affidavit of undertaking to this effect shall be filed within three weeks from today. The impugned order dated 12.09.2022, whereby the defence of the Defendant has been struck off is set aside subject to the Defendant depositing 50% of the amounts due to the Plaintiffs as per the order dated 08.08.2022, within three months from today.

11. Revision petition is partially allowed upholding the impugned order dated 08.08.2022 and setting aside the order dated 12.09.2022 limited to the extent the defence of the Defendant has been struck off, subject to the aforementioned conditions.

12. Revision petition is disposed of along with the pending applications in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 03, 2023/kks