



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

% **Date of order : 11th August, 2023**

+ **C.R.P. 11/2023**

GISIL DESIGNS PVT LTD Petitioner

Through: Mr.____, Advocate (Appearance not given)

versus

COMPUTER JUNCTION PVT LTD Respondent

Through: Mr.Mudit Talesara and Mr.Prakash K.Jha, Advocates alongwith AR of respondent-company

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter “CPC”), has been filed on behalf of petitioner seeking the following reliefs:-

“(a) Revise the impugned order (Annexure P/1) under Sec.115 of the CPC, 1908 dated 26.09.22 of the Hon'ble ADJ of the South East Saket District Court in Computer Junction vs Gisil Designs (CS DJ 754/20169287116) whereby the Hon'ble ADJ has dismissed the application U/o VII R.11(d) of the Petitioner



(Respondent there-in).

(b) Reject the suit of the plaintiff (Respondent here-in) in the aforementioned case i.e., Computer Junction vs Gisil Designs (CS DJ 754/20169287/16) because of concealment of a material document.

(c) Any other order that the Hon'ble Court deems fit.”

2. The relevant factual matrix briefly recapitulated for the disposal of the present petition is reproduced herein:

- a. A suit bearing No. CS DJ 754/20169287/16, was instituted on 20th April 2012, by the plaintiff (respondent herein) against the defendant (petitioner herein), for recovery of Rs. 37,30,525/- with *pendente lite* and future interest of 24% per annum with costs. It was alleged that the petitioner refused to clear the aforesaid dues despite having the respondent raised invoices/bills against the petitioner for rental of equipments which were also duly received and admitted by the petitioner.
- b. Further, the petitioner in the Written Statement stated that the entire amount towards the renting of the said equipments was cleared and that the petitioner was not liable to pay any amount to the respondent as alleged in the aforesaid suit.
- c. Thereafter, cross-examination of the Authorised



Representative (hereinafter “AR”) of the respondent took place on 10th October 2018 and 19th February 2019. The respondent in response to Q-3 as to ‘*whether a contract exists between the plaintiff and defendant*’ admitted to the existence of such agreement in question.

- d. On 1st February 2020, an application was moved by the defendant (petitioner herein) under Order XI Rule 14 of the CPC, for direction to the AR of the respondent to produce the agreement between the respondent and the petitioner.
- e. Consequent thereto, another application was filed by the petitioner under Order VII Rule 11 (d) of the CPC, for rejection of the plaint of the respondent. The same was dismissed by the learned Trial Court *vide* Order dated 26th September 2022. Hence, the present petition has been filed.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has approached this Court challenging the impugned order under the revisional jurisdiction of this Court, after being aggrieved by the dismissal of its application under Order VII Rule 11 (d) of the CPC, by the learned Court *vide* order dated 26th September 2022.

4. It is submitted that the respondent had admitted in evidence *qua* the execution of an agreement dated 19th April 2008 (hereinafter “agreement”), between the respondent and the petitioner, and still it had failed to produce



the same despite having an application moved by the petitioner under Order XI Rule 14 of the CPC. By not filing the said agreement, the respondent has committed fraud upon the Court.

5. It is submitted that the impugned order has been passed erroneously by the learned Trial Court as the Court below had failed to take into consideration that the AR of the respondent has stated in his cross-examination that an agreement has been executed between the respondent and the petitioner. The same is being sought because it is the basis of amount mentioned in the invoices which have been relied upon by the respondent in the recovery suit.

6. Learned counsel has placed reliance on *K.D. Sharma vs. Steel Authority of India*, (2008) 12 SCC 481; *K. Jayaram vs. Bangalore Development Authority*, Civil Appeal No. 7550-7553/2021 and *Swaran Singh vs. Surinder Kumar*, CS (OS) No. 166/1997. It is submitted that the law *qua* concealment of material fact as amounting to fraud is already settled by the Courts, whereby, if a litigant suppresses material facts or documents, he deserves no relief and such suit should be rejected at any stage of the trial whenever it comes to the knowledge that a material fact has been suppressed.

7. Learned counsel appearing on behalf of the petitioner further submits that while dismissing the application, all the facts were not taken into consideration by the learned Court below and it passed the impugned order in contravention to the provision under Order VII Rule 11 (d) of the CPC, and thus the impugned order dated 26th September 2022, passed by the



learned ADJ, Saket Court, South-East District, New Delhi in Suit bearing No. CS DJ 754/20169287/16, deserves to be set aside.

8. *Per contra*, learned counsel appearing on behalf of the respondent/defendant vehemently opposed the averments made by the petitioner and submitted the present petition is nothing but an abuse of the process of law.

9. It is submitted that the impugned order passed by the learned Trial Court does not warrant any interference. Further, the petitioner has not mentioned anything *qua* the said agreement between the parties in his entire written statement.

10. It is further submitted that neither the fact that the petitioner is not in possession of any such agreement nor the relevancy of it on the Suit has been disclosed by the petitioner.

11. In view of the foregoing submissions, the respondent seeks that this Court upholds the impugned order dated 26th September 2022, passed by the learned ADJ, Saket Court, South-East District, New Delhi in Suit bearing No. CS DJ 754/20169287/16, thereby, dismissing the present petition.

12. Heard the learned counsel appearing on behalf of the parties and perused the record.

13. It is now apposite to frame the following issue for adjudication upon the dispute by this Court:

Whether the learned Trial Court was in error while passing the impugned order, thereby, rejecting the application of the petitioner under Order VII Rule 11 of the CPC on the basis that mere admission regarding existence of document/agreement is



not in itself a sufficient ground to presume that fraud has been played upon the Court?

14. Briefly stated, the learned Trial Court observed in the impugned order dated 26th September 2022, that mere admission *qua* the existence of an agreement is not in itself a ground to prove that a fraud has been played upon the Court by the respondent. Moreover, it held that the petitioner in his entire written statement had not mentioned about any such agreement. The petitioner also did not disclose that they are not in possession of any such agreement which was duly signed by them or the relevancy of not filing the said document upon the Suit.

15. The learned Trial Court further observed while dismissing the application of the petitioner that the said document was immaterial to the case and furthermore the same was not mentioned in the pleading of either parties. It further held that in case, it is found that a fraud has been played upon the Court, the same can be dealt with at the final stage of the trial.

Relevant paragraphs of the impugned order are reproduced herein:

“Only because there is an admission regarding the existence of document/agreement is not in itself a ground to presume that there has been a fraud played upon the court by the plaintiff, as the defendant has not come clean to the court thereby mentioning that what the said document was about and the impact of the same on the present case.

If it is found at any stage that the plaintiff has played fraud upon the court by concealing the said document, Its effect may be considered at the final stage I.e. at the time of passing of the final judgment, after considering the case of the parties on record. However, at present, there Is nothing on record to show how that document is material to the case, nor is there



any mention of the same in the pleadings of the parties. There is no merit In the application filed u/o 7 Rule 11 CPC and the same is hereby dismissed.”

16. At this stage, it is imperative to understand the relevant provisions of the law to adjudicate upon the issue framed hereinabove. Order VII Rule 11 (d) of the CPC, reads as follows:

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

.... (d) where the suit appears from the statement in the plaint to be barred by any law...”

17. In light of the instant facts that the learned Trial Court’s dismissal was on the ground that mere admission regarding existence of any document cannot be held to be a sufficient ground to make an assumption that the party to the suit has acted dishonestly thereby, playing fraud upon the Court. At this point, it is necessary to embark upon the issue as to when an application falls within the purview of Order VII Rule 11 of the CPC.

18. The provision under Order VII Rule 11 of the CPC provides for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC is very limited to examining the statement in the plaint. Under Order VII Rule 11 of the CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the



suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the CPC would be on consideration of the principles laid down under the said provision and by the Hon'ble Supreme Court.

19. In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, the Hon'ble Supreme Court enunciated on the aspect of rejection of the plaint and observed that if on a meaningful, not formal 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. The said principle was also followed in *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100, wherein it was held that at the stage of deciding an application under Order VII Rule 11 of the CPC, the Court is not required to see the veracity of averments or correctness of the documents. It is also not to be seen by the Court at such stage whether the documents filed along with the plaint are false or genuine or bogus. The same is a matter of trial regarding the authenticity of the documents. The Court only has to see whether there is a cause of action in favour of the plaintiff to continue with the suit.

20. Hence, the Hon'ble Supreme Court has clarified that while determining any application filed under Order VII Rule 11 of the CPC, the Courts should restrict themselves to the plaint and not go into the detailed facts as provided under the written statement and in the application filed under Order VII Rule 11 of the CPC.



21. In the matter of *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422, the Hon'ble Supreme Court has further reaffirmed the scope of provisions stating rejection of the plaint and held as under:

“17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , where this Court, in para 11, observed thus : (SCC p. 714, para 11)

“11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order 7 Rule 11, the court



has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100].”

22. Furthermore, an important dictum with regard to the material concealment of facts and documents in a suit, has been discussed in ***S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and Others, (2004) 7 SCC 166***, wherein the Hon’ble Supreme Court observed as under:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] . Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material



fact, the suppression of which disentitled her to the relief claimed [Ibid.] . Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court [State of Haryana v. Karnal Distillery Co. Ltd., (1977) 2 SCC 431 : AIR 1977 SC 781] . Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order [Welcom Hotel v. State of A.P., (1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015] .”

23. In view of the judgment by the Hon’ble Supreme Court if it is proved that a party has suppressed any material fact or document, the said party will be held disentitled from the relief. In order to do so, the fact or document which is alleged to have been suppressed must be a fact or document which is crucial and material with regard to the issue in the suit. Only if it can be proved that said suppression is of an essential and relevant fact or document, the Court may adjudicate accordingly.

24. At this juncture it is crucial to delve into the scope of Section 115 of the CPC, under which the present petition has been filed. The Hon’ble Supreme Court has discussed the scope of such powers of the High Court under Section 115 of the CPC, in the matter of ***D.L.F. Housing &***



Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807 which was also followed in ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8 SCC 633.***

25. As per the judgments mentioned in the foregoing paragraph, this Court is of the view that the High Court has limited powers which can be exercised under Section 115 of the CPC. Further, not every order of the Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of this Court.

26. The Hon'ble Supreme Court in ***Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201,*** has enunciated upon the scope of Section 115 of the CPC stating that the ambit of Section 115 of the CPC covers only jurisdictional aspect of the Trial Court. Only those matters are to be allowed under the revisional jurisdiction of the High Court wherein there has been an irregular exercise, or non-exercise, or the illegal assumption of jurisdiction by the Court below.

27. In the instant case, it is the finding of the learned Trial Court that mere failure to produce the said agreement cannot form a sufficient ground to reject the plaint. The learned Trial Court has rightly adjudicated upon the application of the petitioner by going into the merits and has held that non-filing of the said agreement does not tantamount to playing fraud upon the Court. It is also observed that the issue of deciding whether there has been any fraud against the Court is an issue that can be dealt with by the learned Trial Court at the final stage of the trial.

28. It is thus clear that the powers conferred on the Court to reject a plaint



is not an ordinary one, and the conditions enumerated under Order VII Rule 11 of the CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, it is the duty of the Court to determine whether the plaint deserves rejection, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

29. In view of the judgments mentioned herein above, this Court is of the view that the mere fact that a 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 restraint 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 but may interfere if the Court below has exercised its jurisdiction illegally or there is found to be material irregularity in the exercise of jurisdiction by the Trial Court.

30. In view of the above, it is held that no case of revision as defined under Section 115 of the CPC has been made out by the petitioner 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.

31. Accordingly, the issue stands decided.

32. On perusal of the findings of the learned Trial Court, this Court is of the view that there is nothing in the impugned order which suggests that there is any error of jurisdiction or any other error or irregularity which goes



to the root of the matter and invites the intervention of this Court while exercising its revisional powers.

33. In view of the above discussion of facts and law, this Court finds no error in the impugned order dated 26th September 2022, passed by the learned ADJ, Saket Court, South-East District, New Delhi in Suit bearing No. CS DJ 754/20169287/16.

34. Based on the aforementioned discussions, this revision petition is accordingly dismissed.

35. Pending applications, if any, also stand dismissed.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 11, 2023

Dy/ryp

Click here to check corrigendum, if any