



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 9th August, 2023**
+ **C.R.P. 22/2023 and CM APPL. Nos. 4728/2023 and 4730/2023**

BABITA BANSAL Petitioner
Through: **Mr.Bal Krishan Bharti and Ms.Nupur,**
Advocates

versus

M/S HARI OM CHEMICALS Respondent
Through: **Mr.Gaurav Arora, Advocate**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present Civil Revision Petition under Section 115 of Civil Procedure Code (CPC) has been filed by the petitioner seeking the following reliefs:

“It is therefore most respectfully prayed that this Hon’ble Court may kindly be pleased to set aside the impugned Order dated 10-11-2022 passed by Sh. Gurdeep Singh, District Judge (Commercial Court) North West District, Rohini Courts, Delhi in the CS (COMM) 56/2022 titled as M/S HARI OM CHEMICALS VS. M/S TOY MAKER and kindly dismiss the above-mentioned Civil Suit bearing no:CS (COMM) 56/2022



*titled as M/S HART OM CHEMICALS VS. M/S TOY MAKER
pending before the trial Court of Rohini Courts*

*Any other relief which this Hon'ble Court may deem fit and
proper under the facts and circumstances of the case, may also
be passed in favor of the Petitioner / Revisionist and against
the Respondent."*

2. The relevant facts that lead to the filing of the instant revision petition are reproduced herein:
- a. The husband of the petitioner/defendant died on 21st May 2021. On 19th October 2021 the respondent/plaintiff issued a legal notice to the petitioner seeking recovery of an outstanding amount of Rs.12,28,738/- with respect to the alleged goods supplied by the petitioner's husband to the respondent/plaintiff.
 - b. The petitioner replied to the said legal notice on 6th November 2021, stating therein to the effect that the petitioner is not legally liable to make any payment in respect of the Sole Proprietorship firm i.e., M/s Toy Maker which was owned by the petitioner's husband and has closed on 21st May 2021 due to death of the petitioner's husband.
 - c. On 7th January 2022, the respondent/plaintiff filed a civil suit bearing No. CS(COMM)/56/2022 for the recovery of Rupees12,28,738/- against M/S Toy Maker (through its Proprietor Mr. Mohit Bansal, now Deceased) and had also made the present petitioner as Defendant being the legal heir of Late Sh. Mohit Bansal, the Sole Proprietor of M/s Toy Maker.



- d. On 12th April 2022, the petitioner filed her Written Statement along with a reply to the miscellaneous applications before the Trial Court.
 - e. The petitioner also filed the instant application under Order VII Rule 11 of the CPC for seeking dismissal of the Suit, which was subsequently dismissed by the Trial Court vide order dated 10th November 2022.
3. Learned counsel appearing on behalf of the petitioner submitted that the present petition has been filed by the petitioner being aggrieved of the impugned order dated 10th November 2022 passed by the learned Trial Court whereby the application of the petitioner under Order VII Rule 11 of the CPC was dismissed.
 4. It is submitted that the impugned order dated 10th November 2022 is liable to be set aside since the learned Trial Court has not applied its mind judiciously and committed a grave miscarriage of justice. It is well-settled law that a Suit against a dead person cannot be filed.
 5. It is submitted that the impugned order is liable to be set aside since the learned District Judge has not appreciated the factum that a Sole Proprietorship firm is a separate legal entity and with the death of the Sole Proprietor it becomes non-existent and thus no suit can be instituted against the legal representative of the sole proprietor.
 6. It is contended that the impugned order is tainted with arbitrariness, as the learned Judge did not consider the admission of the petitioner regarding the death of the Sole Proprietor before filing the Suit which is clearly reflected in the memo of parties as well as in the pleadings of the main suit.



7. In view of the foregoing paragraphs, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs sought may be granted thereby setting aside the impugned Order dated 10th November 2022 passed by the learned District Judge (Commercial Court) North West District, Rohini Courts, Delhi in CS (COMM) 56/2022.

8. *Per Contra*, the learned counsel for the respondent vehemently opposed the contentions raised by the petitioner and submitted that the instant petition is not maintainable hence, it deserves to be dismissed.

9. It is submitted that the application under Order VII Rule 11 of CPC has been rightly dismissed by the learned Judge as the sole proprietor is an *alter ego* of the sole proprietorship firm and a sole proprietor is always liable in his personal capacity for all the debts due to the sole proprietorship firm. Thus, pursuant to the death of such sole proprietor, legal representatives of the sole proprietor are liable for the liabilities which accrue to the deceased sole proprietor.

10. It is further submitted on behalf of the respondent that pursuant to the death of sole proprietor, the respondent is legally entitled to recover the outstanding amount from the legal representative of the sole proprietor, i.e., the petitioner herein.

11. Learned counsel appearing on behalf of the respondent further submitted that the learned District Judge *vide* paragraph 8 of the impugned order has rightly held the petitioner to be the legal representative of the sole proprietor, being the wife of the sole proprietor, as defined under Section 2 (11) of the CPC.



12. It is submitted that the learned Trial Court has correctly dismissed the application filed by the petitioner and this revision petition does not fall within the ambit of Section 115 of the CPC. It is further submitted that the learned Trial Court has not committed any illegality by irregular exercise or non-exercise of its jurisdiction in passing the impugned order and the same is not erroneous in law.

13. Hence, in view of the foregoing submissions, the respondent seeks that the present revision petition be dismissed thereby upholding the impugned order.

14. Heard learned counsel for the parties and perused the entire material on record.

15. Keeping in view the arguments advanced, the following issue has been framed for adjudication 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?

16. Before embarking upon the merits of the case, it is imperative to understand the scope, nature and object of Order VII Rule 11 of the CPC and Section 115 of CPC under which the instant petition has been preferred by the petitioner.

17. The Hon'ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal***, (1977) 4 SCC 467, has held that if on a plain reading of the plaint, Court is of the view that the averments in the plaint are not disclosing a right to sue, the Court should exercise its power under Order VII Rule 11 of the CPC,



thereby, rejecting the plaint.

18. In another judgment by the Hon'ble Supreme Court in ***Saleem Bhai v. State of Maharashtra***, (2003) 1 SCC 557, the scope of exercising the power under Order VII Rule 11 of the CPC was enunciated. The following was observed:

“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. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

19. The basic idea behind the said provision was also elaborated by the Hon'ble Supreme Court in ***Sopan Sukhdeo Sable v. Asstt. Charity Commr.***, (2004) 3 SCC 137, wherein, the Court observed that the real object of the provision is to keep irresponsible law suits out of the Courts. In case, the Court is *prima facie* of the view that the suit is an abuse of the process of law, the jurisdiction under Order VII Rule 11 of the CPC can be exercised.



20. On a bare perusal of the abovementioned provision and judgments, for rejection of a plaint, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC is concerned, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments made in the plaint. The Trial Court can exercise the power under Order VII Rule 11 of the CPC at any stage of the suit – before registering the plaint or after issuing of summons to the defendant i.e., at any time before the conclusion of the trial. The said principle has also been observed in *Salem Bhai (Supra)*.

21. Order VII Rule 11 of the CPC established a remedy which is purely independent and is made available to the defendant to challenge the maintainability of the suit itself, irrespective of the defendant's right to contest the suit on merits. The provision ostensibly does not state at any stage when the objections to suit can be raised before the trial Court. Further it does not say in explicit words about the filing of a written statement. Instead, the word "shall" is used, clearly implying, thereby, it obligates a duty on the Court in rejecting the plaint in case the said plaint is hit by any of the infirmities provided in the four clauses of Order VII Rule 11 of the CPC, even without the intervention of the defendant.

22. Therefore, it is a settled position of law that in order to reject a plaint for the suit under any of the clauses mentioned in Order VII Rule 11 of the CPC, the Court needs to be guided by the reading of the material in the plaint and not the defence taken by the defendant.

23. In regard to the ambit of Section 115 of the CPC, it is an already



appreciated point of law by the Courts in a catena of judgments. The said provision only confers a supervisory power to this Court with the main aim of keeping superintendence. 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.

24. It embarks a particular limitation prescribing that the High Court shall not interfere merely, because the Court below has wrongly decided a particular suit being not maintainable. It is also prudent to apply the ratio observed in the judgments, 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. This view has also been reaffirmed in the judgment of the Hon'ble Supreme Court in ***Baldevdas Shivilal v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201.***

25. The scope of Section 115 of CPC as discussed hereinabove has also been observed by the Hon'ble Supreme Court in ***ITI Ltd. v. Siemens Public Communications Network Ltd., (2002) 5 SCC 510.*** The relevant paragraph has been reproduced herein below:

“18. Power conferred on the High Court under Section 115 of the Code of Civil Procedure, 1908 over all subordinate courts within its jurisdiction is a supervisory power and has been distinguished from its power of appeal to correct errors of fact and law. The power of revision under Section 115 being in the nature of power of superintendence to keep subordinate courts within the bounds of their jurisdiction cannot be readily inferred to have been excluded by provisions of a special Act



unless such exclusion is clearly expressed in that Act.”

26. The scope of this Court has been further reiterated by Hon’ble Supreme Court in the judgment of ***Prem Bakshi v. Dharam Dev, (2002) 2 SCC 2*** held as follows:

“4. In Major S.S. Khanna v. Brig. F.J. Dillon [AIR 1964 SC 497 : (1964) 4 SCR 409] this Court considered the expression “any case which has been decided” in sub-section (1) of Section 115 CPC and held that the expression “case” is a word of comprehensive import and includes civil proceedings other than suits and is not restricted by anything contained in the said section to the entirety of the proceeding in a civil court and to interpret the expression “case” as an entire proceeding only and not a part of the proceeding would impose an unwarranted restriction on the exercise of powers of superintendence by the High Court. This view of the High Court has now been legislatively adopted by Parliament by introducing the Explanation to sub-section (1) of Section 115 CPC and, therefore, an interlocutory order would be revisable. There is no doubt that the present order being an interlocutory order is revisable under Section 115, but for exercising powers under this section by the High Court, the order must satisfy one of the conditions mentioned in clauses (a) and (b) of the proviso.

5. The proviso to sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not, under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (i) the order made would have finally disposed of the suit or other proceedings, or (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it is made. Under clause (a), the High Court would be justified in interfering with an order of a subordinate court if the said order finally disposes of the suit



or other proceeding. By way of illustration we may say that if a trial court holds by an interlocutory order that it has no jurisdiction to proceed with the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and, therefore, it would not come under clause (a).”

27. In view of the above, it is clear that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto but shall limit itself to the question of errors of exercise of jurisdiction.

28. Now adverting to the issue framed in the instant petition. It is deduced from the facts and submissions advanced, that the main grievance of the petitioner is that there is no cause of action in the plaint, hence, the plaint should be rejected as per Order VII Rule 11 of CPC. The petitioner contended that the amount owed by the respondent is towards M/s Toy Maker, which was a proprietorship firm owned by Late Mohit Bansal i.e, petitioner’s husband. Since, the petitioner’s husband is dead, the petition cannot be filed against a dead person.

29. The issue which was sought to be raised by the petitioner in the application under Order VII Rule 11 of the CPC, was that petitioner being the legal representative of her deceased husband is not liable for the debts of her husband’s sole proprietorship firm which has been closed after his death.

30. The learned Trial Court whilst dismissing the application under



Order VII Rule 11 of the CPC has recorded its reasons. It held that the sole proprietorship and the person, who is the owner of the sole proprietorship, are the same legal entity. Therefore, any debt which is due towards the sole proprietorship is due towards the owner of such sole proprietorship firm.

31. The relevant paragraphs of the impugned order are reproduced herein:

“8. It is not disputed that M/s Toy Maker is a Proprietorship firm deceased Mohit Bansal being the Proprietor of the same. It is also not disputed that Babita Bansal is the wife and legal representative of deceased Mohil Bansal. The Legal Representative is defined in Code of Civil Procedure as under:

Sec.2 (11)-- "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

9. Legal Representative is a person who inter-meddles with the estate of the deceased and can be sued in the said capacity. The contention of the defendant that the suit cannot be filed against a dead person is correct but the present suit is not filed against a dead person, but against the legal representative of the deceased, who is representing the estate of the dead person.

10. The cited judgement of Khaja Begum (Supra) by the Ld. Counsel for plaintiff was to the extent where infact the suit was filed against a dead person and subsequently, it was brought to the notice that the defendant has already expired. The Hon'ble Court permitted the amendment of the suit and making the correction in the defect and suit was said to be main

11. Similarly, in the judgement of Pradeep Anoop Trust Supra was filed in the name of Pradeep Anoop Trust which stood extinguished as on the date of filing of the petition. Hon'ble High Court of Delhi



held that the suit can be corrected and defect can be cured even after filing of the suit. Therefore, the contention that suit is without cause of action is without merit. The case in hand is on better footing as it is clearly mentioned in the suit that the suit is being filed against the legal representative of the deceased.

12. It is also contended on behalf of defendant that legal notice was issued to the deceased after five months of his death. That is not relevant for the present purpose as the suit has been filed correctly against the legal representative and it is not disputed that the defendant Babita Bansal is the legal representative of deceased Mohit Bansal Sole Proprietor of Proprietorship firm

13 . The application is accordingly devoid of merits and hence, dismissed. Application is accordingly stands disposed off.”

32. The learned Trial Court has delved further into the meaning of "legal representative" as per Section 2 (11) of C.P.C. Accordingly, it was held that the petitioner herein, being of wife of the owner of the sole proprietorship firm is a legal representative. Hence, the petitioner is liable to pay the debts which her husband i.e., owner of the sole proprietorship firm was liable to pay during his lifetime.

33. The defence taken by the petitioner/ defendant before the learned Trial Court regarding the legal notice was sent five months after the death of the husband of the petitioner, therefore, the suit cannot be instituted against a dead person. The said defence was rejected by the Trial Court on the ground that the same is not relevant for instituting the suit for recovery of the said amount. The fact which needs to be taken into account is that the respondent/plaintiff has rightly instituted suit against the legal representative and it is not disputed that the petitioner/defendant Babita



Bansal is the legal representative of Late Mohit Bansal, sole proprietor of proprietorship firm.

34. In light of the above facts and circumstances, it is held that the learned Trial Court has rightly passed the impugned order by holding the grounds raised by the petitioner being without any merit.

35. This Court is of the view that it is a well-settled law that all the assets and liability, accrues in favour of or against a person at the time of death of a person, survive in favour of or against the legal representative of a deceased.

36. Furthermore, in view of the facts this Court is of the view that the debt of Rs.12,28,738/-, which Late Mohit Bansal (since deceased), proprietor of M/s Toy Maker, owed to the respondent/plaintiff is now due to be paid by the legal representatives of the defendant, i.e., the petitioner herein. Since, it is an admitted fact that the petitioner/defendant is the wife of Late Mohit Bansal, therefore petitioner/defendant is the legal representative of Late Mohit Bansal and the respondent/plaintiff, i.e., M/s Hari Om, is duly entitled to recover the said amount from the petitioner/defendant. The impugned order of the learned Trial Court, whereby the application of the petitioner under Order VII Rule 11 of the CPC was dismissed is thus upheld.

37. Accordingly, the issue framed is decided.

38. As regards Section 115 of the CPC, there is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter warranting interference of this Court.

39. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned order 10th November 2022 passed by the learned,



District Judge (Commercial Court) North West District, Rohini Courts, Delhi in the CS (COMM) 56/2022.

40. For all the aforesaid reasons, the revision petition is accordingly dismissed along with the pending applications, if any.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 9, 2023
SV/DB

Click here to check corrigendum, if any