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

% *Date of Decision: 25th May 2023*

\+ C.R.P. 14/2019 & C.M. APPL. 3072/2019

CAPT (RETD) INDERBIR SINGH UPPAL ..... Petitioner
Through: Mr. Anil K. Khaware, Advocate.

versus

MANU NAYYAR ..... Respondent
Through: Ms. Samvartika Pathak, Mr. Akshat Dabral and Mr. Nitin Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present revision petition has been filed by the Petitioner assailing an order dated 04.12.2018 passed by the Trial Court, whereby application of the Petitioner under Order VII Rule 11 CPC for rejection of the plaint has been dismissed. Petitioner herein is Defendant No. 1 (hereinafter referred to as the 'Defendant') before the Trial Court and Respondent is the Plaintiff and parties hereinafter are referred to by their litigating status before the Trial Court.

2. Present revision petition has its genesis in a suit filed by the Plaintiff against several Defendants seeking declaration/cancellation of the sale deed dated 11.06.2012 and for rendition of accounts along with permanent and mandatory injunction amongst other reliefs. Upon being served with the summons in the suit, Defendant filed an application under Order VII Rule 11(a), (b) and (d) CPC for rejection of the plaint. Reply was filed by the Plaintiff to the said application

and by the impugned order the Trial Court had dismissed the application.

3. Grounds on which rejection of the plaint was sought by the Defendant before the Trial Court were : (a) no cause of action is made out in the plaint and the suit is predicated on manifestly vexatious and frivolous pleas; (b) sale deed in question is sought to be cancelled on the basis of flimsy and improbable pleas that Plaintiff was unaware of the contents of the sale deed despite the fact that the sale deed is a registered document and at about 29 places Plaintiff has appended his signatures and that being a practicing lawyer he knew or ought to have known and understood what he was signing on; (c) execution of the sale deed, thumb impression of the Plaintiff and signatures at various places on the sale deed as well as presence of the Plaintiff during execution of the sale deed in the office of Sub-Registrar are crucial facts which are not denied by the Plaintiff; and (d) no oral averments can be made or entertained to contradict the sale deed which is a written document, as that would be against the letter and spirit of Sections 91 and 92 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act').

4. Plaintiff opposed the application and submitted that: (a) plaint by its plain reading discloses cause of action in favour of the Plaintiff and the cause set forth is not barred by any law; (b) fraud has been played upon the Plaintiff by the Defendant, who illegally and dishonestly with a view to usurp 50% of Plaintiff's share in the property bearing No. M-10, Green Park Extension, New Delhi (hereinafter referred to as the 'suit property') made him sign on certain documents transferring title in his favour, without the knowledge and consent of the Plaintiff and without payment of sale consideration; (c) consideration of Rs.1,00,000/- allegedly paid to the Plaintiff is no where close to the valuation of the property and there was no reason

for the Plaintiff to have agreed to part with his share for a meagre sum; and (d) case of the Plaintiff is covered under first proviso to Section 92 of the Evidence Act which provides that any fact may be proved which would invalidate any document or which would entitle any person to a decree or order relating thereto, such as fraud, intimidation, illegality etc.

5. The Trial Court by the impugned order dismissed the application in view of the law that an application under Order VII Rule 11 CPC has to be adjudicated only in light of the averments in the plaint and pleas taken by the Defendant in the written statement are wholly irrelevant at that stage. Trial Court after examining the plaint has rendered a finding that the plaint, from a plain reading of the averments therein, discloses a cause of action inasmuch as specific averments have been made by the Plaintiff that fraud had been played on him by the Defendant, who was his old friend. It is averred that Plaintiff was not aware of the actual contents of the sale deed and learnt of the same only after he filed the previous suit being Suit No. 417/2013. Plaintiff had blind faith in the Defendant and did not realise that Defendant was misrepresenting with respect to the actual deal of the property and the contents of the sale deed including the sale consideration and therefore the case of the Plaintiff is covered under first proviso to Section 92 of the Evidence Act. Insofar as the argument of the Defendant that Plaintiff being a lawyer and an educated person ought to have known and understood the implication of a registered document Trial Court has held that it would be a matter of evidence as to whether the Plaintiff had knowledge of the contents of the sale deed and/or whether the execution and signing of the sale deed was by fraud and misrepresentation and these issues cannot be decided at the stage of adjudicating an application under Order VII Rule 11 CPC.

6. Learned counsel for the Defendant reiterates the arguments urged before the Trial Court, which have been captured in the earlier part of this judgment and are not being repeated. Additionally, learned counsel relies on the judgment of the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and Others, (2020) 7 SCC 366***, more particularly, paragraphs 29.2, 29.8, 29.9 and 29.13 thereof. Reliance is also placed on the judgment of this Court in ***Rajiv Sareen v. Divyanshu Enterprises and Others, 2022 SCC OnLine Del 362,*** particularly, paragraph 19, which is as follows:-

> "*19. Coming to the contention of the plaintiff that the sale deed dated 3-4-2018 was obtained by fraud and coercion and thus, the present suit seeking cancellation of the sale deed was maintainable before this Court and not barred by Section 34 of the Sarfaesi Act, it is noted that no particulars of the fraud have been given in the plaint. It is the settled position of law that mere allegations of fraud cannot establish fraud. Specific details and particulars of the alleged fraud have to be given, which have not been given in the present case. A pleading using the word "fraud"/"fraudulent" without any material particulars would not tantamount to pleading of "fraud". In this regard, reference may be made to the judgment of the Supreme Court in Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. [Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd., (2022) 2 SCC 573] and Neha Aggarwal v. PNB Housing Finance Ltd. [Neha Aggarwal v. PNB Housing Finance Ltd., 2016 SCC OnLine Del 3765] preferred whereagainst was dismissed on 27-3-2017. The allegations of fraud, thus, in the plaint appear to be nothing but a product of clever drafting only with a view to bring the suit maintainable before the civil court despite the bar under Section 34 of the Sarfaesi Act.*"

7. Learned counsel appearing on behalf of the Plaintiff has also made submissions which are the same as those urged before the Trial Court and as encapsulated above and relies on the judgment of the Supreme Court in ***Mayar (H.K.) Ltd. and Others v. Owners & Parties, Vessel M.V. Fortune Express, (2006) 3 SCC 100*** as well as a judgment of this Court in ***Brigadier (Retd.) Shyam Prasad v. Dayavati & Others, 2010 SCC OnLine Del 145*** to argue that the

plaint must be read by the Court as a whole to find out whether it discloses a cause of action or not and that it is impermissible at the stage of deciding an application under Order VII Rule 11 CPC to go into the allegations or defence set up in the written statement. So long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Court, Plaintiff may not succeed, cannot be a ground for rejection of the plaint.

8. In response to the argument of the Defendant that no oral averments or evidence can be taken contrary to a written document in view of Sections 91 and 92 of the Evidence Act and the execution of the sale deed thus cannot be questioned by the Plaintiff, counsel for the Plaintiff relies on the judgment of the Supreme Court in ***Ishwar Dass Jain (Dead) Through Lrs. V. Sohan Lal (Dead) By Lrs., 1999 SCC OnLine SC 1235***.

9. I have heard the learned counsels for the parties and examined their respective contentions.

10. Present revision petition has been filed by the Defendant under Section 115 of CPC. It is trite that revisional jurisdiction under the said provision is to be exercised to correct jurisdictional errors only. It is only in three eventualities that the High Court may interfere with the impugned order viz. where the Trial Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted with illegality or material irregularity. ***[Ref. Tek Singh v. Shashi Verma and Another, (2019) 16 SCC 678]***

11. It is equally settled that relevant facts which need to be looked into for deciding an application for rejection of a plaint are the averments in the plaint and the allegations/averments in the written statement cannot be relied upon at this stage. Courts have repeatedly

held that the plaint has to be read in its entirety to see if it discloses a 'cause of action', which is a bundle of facts required to be proved for obtaining relief. At this stage, so long as the plaint discloses some cause of action which requires adjudication/determination by the Court, plaint ought not to be rejected *de hors* the fact that at a later stage the Plaintiff may not succeed in getting the reliefs sought. ***[Ref.: Saleem Bhai & Other. v. State of Maharashtra and Others, (2003) 1 SCC 557, Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others, (2004) 3 SCC 137*** and ***Mayar (H.K.) Ltd. (supra)].***

12. In the present case, Plaintiff has filed a suit for mandatory and permanent injunction as well as cancellation of the sale deed dated 11.06.2012, allegedly executed with respect to the suit property in the name of wife of the Petitioner herein i.e. Defendant No. 3 in the suit. While the Defendant urges that the plaint discloses no cause of action and having admitted to the execution of the sale deed bearing signatures of the Plaintiff at several places and also having been present at the time of execution of the sale deed, it is not open to the Plaintiff to seek its cancellation, Plaintiff pleads fraud in execution of the sale deed and urges that he was not aware of its contents, besides the fact that the alleged sale consideration never changed hands between the parties. Insofar as applicability of Sections 91 and 92 of the Evidence Act is concerned, while case of the Defendant is that in view of the written document i.e. the sale deed, no oral averments to contradict the same can be made and this is a ground enough to reject the plaint, case of the Plaintiff that the plaint ought not to be rejected is predicated on the first proviso to Section 92, in view of the allegations of fraud and misrepresentation etc.

13. Having perused the plaint in its entirety on a plain demurer, this Court agrees with the counsel for the Plaintiff that the same is not

liable to be rejected at the threshold, exercising power under Order VII Rule 11 CPC. Going by the principles elucidated by the Supreme Court in the judgments referred to above and examining the averments made in the plaint it is palpably clear that the Plaintiff has set out a case that Defendant in the month of June, 2012 gave options to the Plaintiff to release his share in the suit property and showed interest in purchasing 50% at the market value of Rs.1.5 crores. Being college friends, Plaintiff had blind faith on the Defendant and considering their old relationship, he did not question the documents prepared by him. Plaintiff has also given a detailed narrative of the export business between him and the Defendant on account of which certain monies were due to the Plaintiff and which the Defendant had promised to adjust at the time of dealing with the suit property. It is further averred that no payment was made by the Defendant at the time of signing of the sale deed in the office of Sub-Registrar. Plaint also contains averments with respect to the acts of the Defendant in renting out the property to a third party and subsequently making attempts to sell the same. It is further stated that Plaintiff earlier filed a suit bearing No. 417/2013 and in the said proceedings it was revealed for the first time that the sale deed was executed in the name of Defendant's wife and only upon seeing the said document it came to light that the sale deed incorporates a false covenant that a sum of Rs.29 lacs was paid to the Plaintiff towards sale consideration. According to the plaint, the cheque numbers mentioned in the said sale deed are totally fictitious and even the annotation to the extent of payment in cash is completely false. It is also stated that Defendant is habitual of cheating people and has been convicted in a corruption case by the CBI for offences under Sections 120-B and 470 IPC read with Section 13(1)(d) and (2) of the Prevention of Corruption Act, 1988 and sentenced to RI for 4 years and fine. From a reading of the plaint, it cannot be said that it discloses no cause of action. Issues raised in the plaint would need determination or adjudication by the Court and at this stage the Court cannot go into the defence raised by the Defendant. There are allegations of fraud and misrepresentation as also a dispute with regard to the contents of the sale deed apart from a denial of having received the sale consideration. Plaintiff has disputed the cheque numbers of the cheques through which purportedly part sale consideration was paid as well as receipt of cash payments. This, in my view, as rightly held by the Trial Court, is a matter of trial and can only be settled after parties adduce evidence and plaint does not deserve to be rejected at the threshold.

14. The judgment of the Supreme Court in ***Dahiben (supra)*** relied upon by the Defendant cannot inure to his advantage. Insofar as the proposition of law laid down by the Supreme Court that Order VII Rule 11 CPC is an independent and special remedy enabling the Court to summarily dismiss a suit at the threshold is concerned, there can be no quarrel and is a binding dictum, however, the judgment is inapplicable in the facts of this case. From a reading of the judgment, it is clear that the Supreme Court found from a reading of the plaint and the documents that Plaintiffs had admitted to the execution of the sale deed in favour of Defendant No. 1 as also acknowledged the payment of full sale consideration. The sale deed recorded that 36 cheques covering the entire sale consideration were paid to the Plaintiffs. In this backdrop, the Supreme Court observed that if the case made out in the plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000/- allegedly remained unpaid and Plaintiffs remained silent for over five and a half years without even issuing a legal notice for payment of the unpaid sale consideration or filing a suit for recovery. It was observed that even if the averments of the Plaintiffs were taken to be true, non-payment of

entire sale consideration could not be a ground for cancellation of the sale deed as Plaintiffs would have other remedies in law for recovery of the balance consideration. The observations of the Supreme Court were essentially in the context of bar of limitation pleaded by the Defendant and the Supreme Court held that from a reading of the plaint it was clear that cause of action arose on non-payment of bulk of the sale consideration, which event occurred in 2009 and the plea raised by the Plaintiffs to question the sale deed was only to create an illusory cause of action so as to overcome the period of limitation. The facts of the said case were entirely different from the present case, where the Plaintiff seeks to question the sale deed and its contents on allegations of fraud and misrepresentation also alleging that the sale consideration was never paid. Insofar as the judgment in ***Rajiv Sareen (supra)*** is concerned, counsel for the Defendant had relied on para 19 thereof. From a reading of the judgment, it is clear that in the said case contention of the Plaintiff was that the sale deed was obtained by fraud and coercion and therefore the suit seeking cancellation of the sale deed was maintainable in the Civil Court and not barred by Section 34 of SARFAESI Act, 2002. It is in this context that the Court held that the Plaintiff had not disclosed specific details and particulars of the alleged fraud and the plaint was a clever drafting only to bring the suit before the Civil Court. Quite apparently, the case has no application to the present case.

15. Counsel for the Plaintiff, in my view, rightly relies on the judgment in ***Brigadier (Retd.) Shyam Prasad (supra)*** in which the Court has placed reliance on the judgment in ***Mayar (H.K.) Ltd. (supra),*** para 12 whereof reads as follows:-

> *"12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out*

whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

16. Counsel for the Plaintiff has also rightly relied on the judgment in ***Ishwar Dass Jain (Dead) Through Lrs. (supra)*** where in turn reliance was placed on an earlier judgment in ***Smt. Gangabai w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharaji Gandhi, (1982) 1 SCC 4,*** where the Supreme Court held that in spite of Section 92(1) of the Evidence Act, it is permissible for a party to a deed to contend that the deed was not intended to be acted upon but was a sham document. Relevant para from the judgment in ***Smt. Gangabai w/o Rambilas Gilda (supra)*** is as follows:-

"The bar imposed by Section 92(1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

(emphasis supplied)

17. After traversing the averments in the plaint, this Court agrees with the findings of the Trial Court that in view of the allegations of fraud and misrepresentation as well as the defence available to the Plaintiff under first proviso to Section 92 of the Evidence Act, this is not a fit case where the Trial Court should exercise the power under Order VII Rule 11 CPC to reject a plaint at the outset and the issues raised require evidence and adjudication.

18. For all the aforesaid reasons, this Court finds no infirmity in the impugned order and the revision petition along with the pending application is accordingly dismissed.

19. It is made clear that this Court has not expressed any opinion on the merits of the case and the observations made in the judgment are only for the purpose of deciding the present revision petition.

JYOTI SINGH, J

MAY 25, 2023/shivam