



2023:DHC:6906



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 11th September, 2023**
+ C.R.P. 93/2023 & CM APPL. 18140/2023
M/S. ASHA AUTO AGENCIES AND ORS Petitioners
Through: Mr. Rohit Rattu, Advocate.

versus

RAJESH KUMAR SHARMA Respondent
Through: Mr. Sanjeev Kumar, Advocate with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition has been filed against the impugned order dated 1st February, 2023 passed by the learned Additional District Judge-05 (Central District), Tis Hazari Court (hereinafter "Trial Court"), by way of which the application filed on behalf of the petitioner/revisionist under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter "CPC") stands dismissed. The following reliefs have been sought by the petitioner:

"a) Set aside Impugned Order dated 01.02.2023 passed by Ld. Additional District Judge-05 (Central District), Tis Hazari Court, in the matter between the parties herein;

b) Pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the Petitioner and against Respondent herein."



2. The record of the matter reveals that the respondent herein had preferred a suit for rendition of accounts, permanent injunction and recovery of share against the petitioner before this Court pursuant to disputes having been arisen between them pertaining to their business and dealing with each other. The suit was transferred to the Tis Hazari Court, i.e., the present Trial Court due to the change in jurisdiction of the Courts. In the said suit, the petitioner had preferred an application under Order VII Rule 11 of the CPC on the ground that the Trial Court had no territorial jurisdiction to decide the suit and as such the suit was barred by limitation under Section 69 of the Indian Partnership Act, 1932, (hereinafter “the Partnership Act”) and that certain facts had been concealed by the respondent herein. The said application of the petitioner was dismissed *vide* order dated 1st February 2023, aggrieved of which the petitioner is now before this Court assailing the impugned order.

3. The learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court had rejected the said application without considering the facts of the case as well as the grounds/submissions made by the learned counsel appearing for the petitioner/revisionist in the application at the time of addressing the arguments.

4. It is submitted that as per Section 69 of the Partnership Act, the suit filed by the respondent is barred because it is a settled principle of law that partners in an unregistered partnership firm cannot sue for enforcement of a right arising from unregistered partnership deed. Furthermore, the respondent has nowhere pleaded in their plaint that the firm is already



dissolved. Thus, the suit filed by the respondent is nowhere covered by any of the exceptions provided under section 69 of the Partnership Act.

5. It is also vehemently argued on behalf of the petitioner that the learned Trial Court failed to consider that the suit of the respondent is liable to be dismissed for concealment of facts and forgery committed by the respondent himself who have been behind the bars in Case FIR No.0111 dated 17th April 2015 Police Station Shamli, Uttar Pradesh, under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 vide Case No.142/15.

6. It is further submitted that the instant suit is also time barred as the transactions pertain to 2004 however, the respondent filed the suit in the year 2014 and this was not considered by the learned Trial Court in accordance with law, settled by this Court as well as by the Hon'ble Supreme Court. Further, the learned Trial Court has failed to take into account that the suit of the respondent is liable to be dismissed as there is no jurisdiction to try and entertain the present suit with the Trial Court.

7. It is submitted that the respondent claimed that the Court has jurisdiction on the basis of alleged execution of Deed of Partnership as well as Guarantee papers. However, no cause of action ever arose within the jurisdiction of the Court.

8. It is submitted on behalf of the petitioner that the impugned order is unjustified, unwarranted and contrary to law and has been passed without understanding the intent and objective of the laws, Acts and facts and therefore, is liable to be set aside.

9. *Per contra*, the learned counsel appearing for the respondent



vehemently opposed the submissions made by the learned counsel appearing for the petitioners and submitted that the instant revision petition is nothing but grave abuse of the process of law.

10. It is submitted that the learned Trial Court, passed the impugned order dated 1st February 2023 after considering the entire facts and law applicable in the instant matter. It is also submitted that the impugned order enunciates detailed reasons for deciding the application under Order VII Rule 11 of the CPC, filed by the plaintiff and there is no illegality or error committed by the learned Trial Court.

11. Learned counsel appearing for the respondent further submitted that the learned Trial Court, after perusing the averments made in the plaint as well as the documents filed along with the plaint reached to the conclusion that there is no case made out for setting aside the suit at the stage of deciding the application under Order VII Rule 11 of the CPC and accordingly, passed the impugned order. However, there is no such error in the impugned order which warrants interference by this Court and as such the instant petition being devoid of merit is liable to be set aside.

12. Heard the learned counsel appearing for the parties and perused the record, including the impugned order dated 1st February, 2023 as well as the other averments made in the instant writ petition.

13. The petitioner before this Court has filed the instant petition assailing the order passed by the learned Trial Court in his application filed under Order VII Rule 11 of the CPC. At the time of considering an application under Order VII Rule 1, the trial Court adjudicating upon the suit need not



conduct a roving inquiry into the facts and merits of the case, but has to limit itself to the consideration laid down under the provision itself. The law regarding this position stands settled.

14. The Hon'ble Supreme Court in ***T. Arivandandam v. T.V. Satyapal***, (1977) 4 SCC 467, has held that if on a meaningful and informal reading of the plaint, the averments are 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.

15. Further, in the judgment of ***Kamala v. K.T. Eshwara Sa***, (2008) 12 SCC 661, the Hon'ble Supreme Court held that the issues on merits of the matter which may arise between the parties would not be within the realm of the Court at the stage of application under Order VII Rule 11 of the CPC. Further, all the issues *qua* the suit, need not to be decided under an application for rejection of the plaint.

16. The Hon'ble Supreme Court in the judgment passed in ***Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar***, (2018) 6 SCC 422, 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] .”

18. The High Court has adverted to Church of Christ Charitable Trust and Educational Charitable Society [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , which had the occasion to consider the correctness of the view taken by the High Court in ordering rejection of the plaint in part, against one defendant, on the ground that it did not disclose any cause of action qua that defendant. The High Court has also noted the decision relied upon by the contesting respondents in Mayur (H.K.) Ltd. [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100] , which has restated the settled legal position about the scope of power of the Court to reject the plaint under Order 7 Rule 11(d) CPC.”

17. 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 summons to the defendant i.e., at any time before the conclusion of the trial. However, upon consideration of the interpretation and scope of the provision under Order VII Rule 11, it is evident that for rejection of a plaint, the relevant facts which need to be looked into for adjudicating upon an application there under are the contents and averments made out in the plaint and not anything beyond that.

18. The learned Trial Court while passing the impugned has considered the position of law laid down under the provision, which has been interpreted by the Hon’ble Supreme Court by way of several judgments,



including the ones reproduced above, and has stated as under:

“10. It is significant to note that no specific term of partnership firm has been agreed to between the parties as per the partnership deed dated 19.11.2003. Although the defendant no. 1 has alleged the aforesaid partnership deed to be forged and fabricated, however, it is settled legal position that at the time of adjudication of application under Order 7 Rule 11 CPC, the Court is bound to consider the averments made in the plaint only and defence of the defendant cannot be taken into consideration at this stage. Thus, as per the partnership deed dated 19.11.2003, while read in the light of Provisions of Section 7 of the Indian Partnership Act, 1932, the partnership between the plaintiff and defendant no. 2 was a partnership at will and prima facie, the said partnership stood dissolved upon communication of notice dated 07.09.2013 of the plaintiff upon defendant no. 2 since besides his share of profits in defendant no. 1 firm, plaintiff has also demanded his capital back from the defendant no. 2 which was invested by him in defendant no. 1 firm. Thus, in my considered opinion, the present suit is saved by the Provisions of Section 69(3) of the Indian Partnership Act despite the fact that the defendant no. 1 was an unregistered partnership firm of plaintiff and defendant no. 2.

11. So far as the issue of limitation is concerned, the same is not only a mixed question of fact and law but even otherwise, prima facie as per the averments made in the plaint, the same seems to be within limitation as it has been filed by the plaintiff in August 2014 consequent upon dissolution of the partnership firm in the month of September 2013.”

19. The learned Trial Court observed that no specific term of the partnership between the parties was agreed in the partnership deed dated 19th November 2003, thus, according to Section 7 of the Partnership Act, the partnership between the parties was partnership at will. Upon



communication of notice dated 7th September 2013 to the petitioner by the respondent, the said partnership stood dissolved. Further, in view of the learned Trial Court, the case in hand comes under the exception mentioned in Section 69(3) of the Partnership Act because upon dissolution, apart from respondent share of profit in petitioner's firm, respondent has also prayed for return of his capital invested by him from the petitioner's firm.

20. The other ground invoked by the petitioner herein while seeking rejection of plaint is on the issue of territorial jurisdiction. It has been submitted on behalf of the petitioner that the petitioner no. 1 Proprietor Firm is run by petitioner no.2 within the jurisdiction of District Shamli, Uttar Pradesh. The admission of the respondent in the alleged Partnership Firm was also for District Shamli, Uttar Pradesh. The alleged unregistered Partnership Deed cannot be accepted for the purpose of jurisdiction of Delhi as the place of business of the alleged Partnership Deed is District Shamli, Uttar Pradesh. The said objection has been considered and answered by the learned Trial Court as under:

"6. So far as the challenge to the jurisdiction of this court is concerned, Ld. Counsel for defendant no.1 has relied upon the Provisions of Section 16 of the CPC to contend that since the entire business of the defendant no.1 firm is situated in Shamli, Uttar Pradesh, this Court has no jurisdiction to deal with the present suit. On the other hand, it has been submitted by Ld. Counsel for plaintiff that since the partnership deed dated 19.11.2003 was executed between the plaintiff and defendant no.2 at Tis Hazari Courts, Delhi and the plaintiff is seeking his share of profits in terms of the same consequent upon dissolution of the firm vide notice dated 07.09.2013, this Court



has territorial jurisdiction to decide the present suit in terms of Provisions of Section 20 of the CPC. I find force in the aforesaid submission made on behalf of the plaintiff. Since the present suit is arising out of the partnership dated 19.11.2003, which as per the recitals of the deed, was executed at Delhi, in my considered opinion, prima facie part of cause of action has arisen within the jurisdiction of this Court and hence, this Court has territorial jurisdiction to entertain the present suit in terms of Section 20 of the CPC.”

21. The learned Trial Court while adjudicating upon the issue of jurisdiction raised by the petitioner held that the instant suit is on the basis of the partnership dated 19th November 2003 and the said partnership deed was executed in Delhi. Therefore, the Trial Court held that cause of action has arisen in Delhi and therefore, the suit falls within the jurisdiction of the Trial Court according to Section 20 of the CPC.

22. Upon perusal of the impugned order, it is evident that the learned Trial Court, while passing the order considered the facts, submissions, as well as the contentions raised in the plaint on behalf of the respondent herein and only then passed the impugned order, while also appreciating the law laid down.

23. At this juncture, it is deemed necessary to reiterate in brief the scope of powers that this Court has under Section 115 of the CPC, which provides that under the revisional jurisdiction, the High Court can only interfere in an order passed by the Trial Court, where it appears that the concerned subordinate court exercised a jurisdiction not vested in it by law, or failed to exercise a jurisdiction so vested or that the court acted in the exercise of its jurisdiction illegally or with material irregularity.



24. The objective of the provision under Section 115 of the CPC is to prevent subordinate courts from acting arbitrarily, capriciously and illegally while they exercise their jurisdiction. The scope of revisional powers has been reiterated, amongst several others, in the judgments passed in ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh*, (1969) 3 SCC 807, and *Ambadas Khanduji Shinde vs. Ashok Sadashiv Mamurkar*, (2017) 14 SCC 132**, wherein the Hon'ble Supreme Court held that it is not open for a High Court to delve into the questions of facts and merits while adjudicating upon an order under revision.

25. Upon consideration of the entirety of the matter, it is found that the learned Trial Court passed the impugned order only after considering the material placed before it, the submissions and objections raised on behalf of the plaintiff in his suit and in the application made on behalf of the defendant as well as the intervening circumstances pertaining to the issues raised on behalf of the defendant by way of its application seeking the rejection of plaint. There is nothing in the contents of the impugned order that suggests that the while passing the order, the learned Trial Court has exercised jurisdiction not vested in it by law or that it failed to exercise jurisdiction that is vested in it. Moreover, the petitioner has also failed to show that the learned Trial Court, while passing the impugned order has exercised his jurisdiction illegally, or that the impugned order suffers from any infirmity or material irregularity.

26. Therefore, considering the aforesaid facts, circumstances, submissions made on behalf of the parties during the course of arguments, as well as the



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contents of the impugned order dated 1st February 2023, this Court is not inclined to exercise its revisional jurisdiction and set aside the impugned order which has been passed after due consideration and in proper exercise of the powers.

27. The learned Trial Court has given detailed reasons while deciding the application under Order VII Rule 11 of the CPC, filed by the petitioner and there is no illegality or error committed by the learned Trial Court which invites interference from this Court. There is no cogent reason for this Court to interfere in the order passed by the learned Trial Court by exercising powers under Section 115 of the CPC and accordingly, the instant revision petition, being devoid of any merit, is hereby dismissed.

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

29. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 11, 2023

pa/ms

Click here to check corrigendum, if any