



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 24th August 2023**
+ **C.R.P. 222/2023 and CM APPL.Nos.41773/2023 and 41774/2023**

PARVEEN KUMAR Petitioner
Through: **Ms.Sangeeta Jain, Advocate**

versus

SUNIL SHARMA AND ANR & ANR. Respondents
Through: **Nemo**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition is filed under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") on behalf of the petitioner seeking the following reliefs:

"i. To call for the records of CS No. 424/2020 titled Sunil Sharma & Ors. Vs. Parveen Kumar from the court of Sh. Ajay Gulati, ADJ Central, THC Delhi which is now fixed on 20.7.2023.

ii. Be pleased to set-aside/ quash / annul the impugned order dated 15.4.2023 passed Ajay Gulati, ADJ Central, THC Delhi in civil suit No. 424/2020 titled as Sunil Sharma & Ors. Vs. Parveen Kumar.

iii. And be pleased to allow the application under order 7 rule 11 read with Section 151 CPC on behalf of the defendant.



iv. Pass such other and further order/ orders as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case."

2. The facts leading to the filing of the instant petition are reproduced herein for reference:

- a. An Agreement to Sell dated 9th September 2004 (hereinafter "ATS"), was executed between the petitioner and the respondents which include Mr. Sunil Sharma and Mr. Sanjay Sharma (since deceased). It is alleged that in the said ATS 'the entire second floor along with roof rights' of property bearing No. 1619 to 1631, measuring about 310 Sq. Yard, situated at Bahadurgarh Road, (hereinafter "Suit Property") was to be transferred by way of sale in favour of the respondents by the petitioner. The date fixed for the execution of the sale deed was 31st January 2005.
- b. In pursuance to the said ATS, part payment of the total sale consideration was made in favour of the petitioner by the respondents and accordingly the petitioner handed over the possession of the Suit Property to the respondents.
- c. Thereafter, at the request of the petitioner, the date of the execution of the sale deed got extended several times, due to the reason that the step brothers of the petitioner are the recorded owner of the Suit Property and that they reside in Canada. In absence of the recorded owners, the sale deed



could not be executed in favour of the respondents.

- d. Meanwhile, in the year 2010, the petitioner executed a separate agreement to sell with Mr. Sanjay Sharma (since deceased). However, as stated above, the possession of the Suit Property was already with the respondents, therefore, the petitioner was estopped to enter into another agreement.
- e. After a duration of 13 years, the petitioner sent a notice dated 13th April 2018, to the respondents seeking the possession of the Suit Property. Consequently, on 21st August 2018, a suit for possession and permanent injunction was filed by the petitioner against the respondents and the same is pending before the Trial Court. In the said suit, the petitioner had stated that the title of the Suit Property is in favour of the petitioner *vide* a Gift Deed dated 1st June 2018.
- f. In view of the aforesaid, the respondents (plaintiffs before the learned Trial Court) filed a Civil Suit bearing No. 424/2020, seeking specific performance of the ATS against the petitioner (defendant before the learned Trial Court). In the said suit, the petitioner filed an application under Order VII Rule 11, read with Section 151 of the CPC, for rejection of the plaint of the respondents on the ground that it is barred by limitation. The same was dismissed by the learned ADJ, Central District, Tis Hazari Court, Delhi *vide* the impugned order dated 15th April 2023. Aggrieved by the



same, the petitioner has filed the present petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court had failed to appreciate that as per Article 54 of Limitation Act, 1963, the limitation for specific performance of a contract is three years from the date fixed for the performance or if no such date is fixed, when the respondents had noticed that performance is refused. It is submitted that the present suit is, thereby, barred by the limitation.

4. It is submitted that the learned Trial Court failed to take into consideration that as per the terms of the ATS, it was agreed among the parties that the sale deed was to be executed on 31st January 2005, and the said date was postponed at the request of the petitioner on several occasions. It is also submitted that the said request was made on behalf of the petitioner because the recorded owners of the Suit Property are the step brothers of the petitioner and at the relevant time they were residing in Canada.

5. It is further submitted that as per the letter dated 24th January 2007, the date for execution of the sale deed was extended up to 31st August 2007, and the same accrued a cause of action in favour of the respondents for filing a suit seeking specific performance of the ATS. However, the respondents neither paid the balance sale consideration nor did they institute any proceeding before the Court to seek the relief of specific performance of the said ATS.

6. Learned counsel submitted that the cause of action for filing of the suit again accrued in favour of the respondents when a separate agreement to sell was executed between the petitioner and Mr. Sanjay Sharma (since



deceased), in the year 2010, which was estopped later.

7. It is submitted that since the cause of action accrued in the year 2007, and then in the year 2010, the suit of the respondents filed in the year 2020, is barred by the limitation as per Article 54 of the Limitation Act, 1963.

8. It is submitted that the above said tantamount to be a ground for rejection of the respondents' plaint. Therefore, the learned Trial Court erred in not considering the same as a ground mentioned under the provisions of Order VII Rule 11 of the CPC, thereby, making the plaint of the respondents' liable to be rejected.

9. It is submitted that in view of the foregoing submissions made on behalf of the petitioner, the impugned order dated 15th April 2023, passed by the learned Trial Court, Central District, Tis Hazari Court, Delhi, in Civil Suit bearing No. 424/2020, may be set aside and the instant petition be allowed.

10. Heard the learned counsel appearing on behalf of the petitioner and perused the material placed on record.

11. It is the case of the petitioner that the Civil Suit bearing No. 424/2020, filed by the respondents, whereby, they have sought specific performance of the ATS, executed among them for sale of the Suit Property, is barred by the law. The petitioner had filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint of the respondents on the ground that the same was filed after the expiry of the limitation period prescribed under Article 54 of the Limitation Act, 1963.

12. The learned Trial Court had dismissed the said application *vide* the



impugned order dated 15th April 2023. Aggrieved by the said dismissal of his application the petitioner has approached this Court under the revisional jurisdiction, challenging the abovementioned impugned order. The relevant paragraph of the said impugned order is reproduced herein-

“Be that as it may, a scrupulous reading of the plaint as well as the documents filed along with the plaint shows that both the parties have pleaded extension of time for the performance of the agreement to sell dated 09.09.2004 in their respective manner and from the plaint as well as the documents filed along with the plaint, it cannot be said with certainty that the defendant had notified the plaintiff prior to 13.04.2018 about the perfection of his title qua the suit property and therefore the plaint cannot be rejected on the ground of being barred by limitation and in the considered opinion of this Court, the question of limitation, in the facts and circumstances of the present case, appears to be a mixed question of fact and law which can only be decided after affording an opportunity to the parties to lead their respective evidence. In view of the above, the application under Order 7 Rule 11 CPC filed by the defendant is hereby dismissed.”

13. Upon a bare perusal of the impugned order, it is observed that the learned Trial Court had dismissed the petitioner’s application for rejection of the plaint as it found that the issues raised by the petitioner with regard to the accrual of the cause of action and limitation period are of such a nature that the same cannot be decided by way of mere reading of the averments made by the respondents in their plaint.

14. The learned Court below had further observed that the said issues cannot be adjudicated upon at the stage of deciding an application under



Order VII Rule 11 of the CPC, as doing so would require the parties to lead evidence. In consideration of the said facts and circumstances, the learned Trial Court, while passing the impugned order was of the opinion that since the issue of limitation involve mixed question of facts and the law, the same cannot be dealt under the application filed by the petitioner.

15. At this juncture, this Court deems it fit to delve into the aspect of law governing the extent and scope of the relevant provisions mentioned hereinabove and also to discuss the principles settled in the catena of judgments delivered by the Hon'ble Supreme Court.

16. 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. The said rejection of a 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 the judgements of the Hon'ble Supreme Court.

17. The Hon'ble Supreme Court had held that the question of limitation is a mixed question of law and fact. If on the reading of a plaint, *ex facie* the Court is not able to draw an opinion of it being barred by time, then such



issue must not be dealt in an application for rejection of plaint. Consequently, the suit in such case, could not be dismissed as barred by the limitation without proper pleadings, framing of an issue of limitation and taking of evidence. The same principle has been enunciated by the Hon'ble Court in ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 662.***

18. Further, in the judgment of ***Kamala & Ors. vs. K.T. Eshwara & Ors., AIR 2008 SC 3174***, the Hon'ble Supreme Court held that:

“15. Order VII, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint.”

19. The Hon'ble Supreme Court has time and again, reiterated the settled principles of law while deciding an application seeking rejection of a plaint on the ground of limitation. In the dictum of ***P.V. Guru Raj Reddy v. P. Neeradha Reddy, (2015) 8 SCC 331***, the Hon'ble Court has further clarified the ambit of the provision under Order VII Rule 11 of the CPC, and discussed as under:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or



in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

20. At the outset it can be held that the plea of limitation cannot be decided as on abstract decision of law, divorced from facts, inasmuch as in every case limitation has to be ascertained based on the averments put forward in the plaint and as such, it varies from case to case. There cannot be any straight jacket formula.

21. The Hon'ble Supreme Court has repeatedly held that when a plea regarding rejection of plaint is made for invoking the provision under order VII Rule 11 (d) of the CPC, it is the averments made in the plaint alone, which has to be looked into and no amount of plea made in the written statement or the objection taken in application made under the above said provision can be examined.

22. Furthermore, in view of the aforesaid judgements, it is patently clear



that according to the broad contours *qua* the examination of application under Order VII Rule 11 of the CPC, laid down by the Hon'ble Supreme Court in a catena of cases, it is the averments laid down in the plaint which has to be taken into account and read in entirety. If it is *ex facie* decipherable from such averments that the suit is barred by limitation, counted from the date of presentation of plaint, then no further enquiry is to be undertaken. Such vigilant examination is imperative to reject vexatious plaints outrightly, so that conduction of trial is not rendered futile.

23. Now adverting to the facts of the instant petition. The petitioner in his application under Order VII Rule 11 of the CPC, had contended before the learned Trial Court that the plaint of the respondents is liable to be dismissed on the ground that it was filed beyond expiry of the limitation period of 3 years. It was contended that the cause of action arose in favour of the petitioner when the execution of the sale deed was allegedly extended up to 31st August 2007, and later when a separate agreement to sell was executed between the petitioner and Mr. Sanjay Sharma (since deceased), in the year 2010, thereby, causing refusal on part of the petitioner.

24. The respondents in their reply to the application of the petitioner under Order VII Rule 11 of the CPC, had contended before the learned Trial Court that the issue raised by the petitioner with regard to the limitation period is a mixed question of fact and law. It was further averred therein, that the petitioner never notified that he had become the absolute owner of the Suit Property and instead of notifying the same, the petitioner sent a legal notice dated 13th April 2018, seeking possession of the Suit Property.



Due to this reason, the cause of action accrued from the date of refusal to perform the part of contract/ATS, on part of the petitioner. Consequently, the respondents filed the suit in the year 2020, and in view of the same, it is within the limitation period of 3 years from the date of issuance of the said legal notice, and hence, the plaint of the respondents could not be rejected merely because the suit was filed in the year 2020.

25. A bare perusal of the plaint along with the documents annexed thereto, shows that the time for execution of the sale deed was extended time and again. Further, there is uncertainty *qua* the disclosure by the petitioner to the respondents about the title w.r.t. the Suit Property. The learned Trial Court while observing the abovesaid rightly held that the same amount to issues that would require the parties to lead evidence since the dispute requires deliberation by delving deeper into the issue for proper adjudication of the suit.

26. The learned Court below observed that, in view of the above, the issue of limitation is not a simple issue that can apparently be decided by way of plain reading of the averments made in the plaint as the same is a mixed question of law and facts. It rightly held that such issues cannot be decided under the limited power granted by the Courts under Order VII Rule 11 of the CPC.

27. This Court is of the view that Order VII Rule 11 of the CPC, empowers the Court to reject a plaint where any of the conditions specified in the said provision is fulfilled and one of the clauses provided under Order VII Rule 11 of the CPC, seeking rejection of a plaint is that where the plaint



is barred by any law.

28. 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 in the application filed under Order VII Rule 11 of the CPC. 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 the said rule, it is the duty of the Court to determine whether the plaint deserves to be rejected, by scrutinizing the averments made in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

29. Considering the same, the learned Trial Court has meticulously taken into account the necessary facts and circumstances, and rightly concluded that the question of limitation in view of the factual matrix and legal position of the instant case can only be decided, once the parties are preferred an opportunity to lead their respective evidence. In view of the same, this Court upholds the said reasoning stated by the learned Trial Court while passing the impugned order.

30. Since this Court has discussed the facts of the instant case in the foregoing paragraphs, it will only be prudent to further discuss the scope of the Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.



31. Adverting to the scope of exercise of power by this Court under its revisional jurisdiction, reliance is placed on the judgment of ***Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495**, wherein the Hon'ble Supreme Court observed as follows-

“7. It is not open to the High Court to question the findings of fact recorded by a subordinate court in the exercise of its revisional jurisdiction under Section 115 of the Code which, it is well-settled, applies to cases involving questions of jurisdiction i.e. questions regarding the irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court and is not directed against conclusion of law or fact in which questions of jurisdiction are not involved : See Bala Krishna Udayar v. Vasudeva Aiyar [LR 44 IA 261, 267] ; A. Batchamian Sahib and Co. v. A.N. Channiah [CAs Nos. 452 and 487/62 decided on 19-10-62]”

32. In the aforesaid judgment, the Hon'ble Supreme Court had observed that if the erroneous decision by a subordinate court results in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and in such circumstances, the Court must exercise its revisional powers but not otherwise.

33. Furthermore, as per the judgment of the Hon'ble Supreme Court in ***Baldevdas Shivilal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201**, the scope of Section 115 of the CPC includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. 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. It embarks a peculiar kind of limitation that needs to be followed in its true



letter and spirit. The High Court under Section 115 of the CPC, shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.

34. The abovestated principle in regard to the restricted powers of the High Court under Section 115 of the CPC, has been recently upheld by the Hon'ble Supreme Court in ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd., (2022) 8 SCC 633***. The Hon'ble Court therein, held that the said provision restricts the powers of the High Court in revision. The plea of the revisionist can only be held to be maintainable where it is found that in case the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

35. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, 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.

36. Therefore, no case of revision as defined under Section 115 of the CPC, has been made out by the petitioners 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.

37. In view of the above discussions of facts and law it is, hereby, held



that there is no error on the part of the learned Trial Court in dismissing the application under Order VII Rule 11 of the CPC, filed by the petitioner. The learned Trial Court has correctly passed the impugned order by stating that the issues raised by the petitioner are subject matter which require the parties to lead evidence to prove whether the limitation period for filing the suit is expired or not. The same are prudent to be adjudicated upon, at the time of deciding the matter on merits and not under an application for rejection of the plaint.

38. Since the petitioner has failed to make his case seeking revision, and in the absence of any infirmity in the exercise of jurisdiction by the learned Court below. The impugned order dated 15th April 2023, passed by the learned Trial Court, Central District, Tis Hazari Court, Delhi, in Civil Suit bearing No. 424/2020, is hereby upheld.

39. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 24, 2023
SV/RYP

Click here to check corrigendum, if any