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

Date of decision: 01.09.2023

\+ **CM(M) 1367/2023 & CM APPLs. 43382/2023, 43383/2023**

PRIYADARSHAN GUPTA ..... Petitioner
Through: Mr. K. B. Shankar, Mr. Aaftab Husain and Mr. Akhliesh Kumar, Advocates

versus

ANOOP GUPTA ..... Respondent
Through: Mr. Hitender Kapur, Advocate (Through VC)

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 43381/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1367/2023 & CM APPLs. 43382/2023, 43383/2023

1. This petition filed under Article 227 of the Constitution impugns the order dated 25.02.2023 passed by District Judge (Comm.), Central District, Tis Hazari Courts ('Trial Court') in CS (COMM) 132/2021, titled as **Anoop Gupta v. Priyadarshan Gupta,** dismissing the application filed by the defendant i.e., the Petitioner herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC').

1.1. The Petitioner is the defendant and the Respondent is the plaintiff in the suit.

1.2. The suit has been filed by the Plaintiff for rendition of accounts of the partnership firm M/s Gupta Mediscan Centre, permanent injunction and recovery of Rs. 70,00,000/-.

1.3. In the suit, the Respondent has relied upon the Memorandum of Understanding ('MoU') dated 17.12.2019 and its terms and conditions in support of its claims.

1.4. The suit has been registered as a commercial suit and is being tried under the provisions of Commercial Courts Act, 2015 ('act of 2015').

2. The learned counsel for the Petitioner states that in pursuance to the MoU dated 17.12.2019, the Petitioner herein had issued five (5) cheques for a total sum of Rs. 70,00,000/- in favour of the father of the Respondent herein i.e., Sh. Diwan Chand Gupta. He states that the father of the Respondent is admittedly not a party to the said commercial suit. He states that therefore the said suit for recovery of money is not maintainable as against the Petitioner herein.

2.1. He states that the plaint fails to disclose the receipt of an amount of Rs. 14,00,000/-, which was already paid by the Petitioner to the Respondent and therefore, in the plaint, the Respondent has wrongly raised a claim for Rs. 70,00,000/-.

3. Mr. Hitender Kapur, Advocate has entered appearance on behalf of the Respondent.

3.1. He states that it is trite law that while considering an application under Order VII Rule 11 CPC, the Court is only required to examine the averments made in the plaint and the documents filed in support thereof. He states that the defence raised in the written statement cannot be taken into consideration.

3.2. He relies upon the averments made in the plaint and more specifically paragraph '9' therein to state that the Respondent herein has relied upon the

MoU to aver that the liability of the Petitioner arises under the said memorandum in favour of the Respondent herein. The said paragraph '9' of the plaint reads as under:

> *9. That the defendant issued five cheques for sum of Rs14,00,000/- each (Rupees Fourteen lakhs) in discharge of his liability towards payment of Rs70,00,000/- (Rupees Seventy Lakh), as sealed in Memorandum of Understanding, with the undertaking that the said cheques will be encashed on presentation.* ***The plaintiff requested that cheques be issued in name of his father and the same was accepted by the defendant, thereafter the above mentioned cheques were issued in the name of father of plaintiff.***
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> (Emphasis supplied)

3.3. He states that the five cheques were issued in favour of the father of the Respondent at the instance of the Respondent and in discharge of the liability which is owed to the Respondent herein. He states that therefore, the finding of the Trial Court that the plaint discloses a cause of action suffers from no error.

3.4. He states that the cost imposed by the Trial Court vide impugned order of Rs. 5,000/- has been duly paid by the Petitioner to the Respondent on 20.04.2023. He states that in fact the Petitioner after passing of the impugned order duly participated in the proceedings before the Trial Court and even sought a reference to Mediation. He states that after the Mediation has failed, the present petition has been filed impugning the order dated 25.02.2023 in a belated attempt.

4. This Court has considered the submissions of the parties and perused the record.

5. This Court is of the opinion that the arguments raised by the counsel for the Petitioner as regards non-disclosure/non-adjustment of the amount of Rs. 14,00,000/- paid by the Petitioner to the Respondent is the defence of the

Petitioner, as has been rightly observed by the Trial Court. The receipt of payment of Rs. 14 Lakhs has not been admitted by the Respondent. The said issue will be duly considered by the Trial Court at the time of adjudicating the claim of the plaintiff.

6. Similarly, the non-impleadment of the father of the Petitioner and its effect being an objection, which has been specifically raised by the Petitioner as well will be adjudicated by the Trial Court while considering the maintainability of the claims of the Respondent.

7. However, in view of the fact that in the plaint at paragraph '9', the Respondent has specifically averred that the MoU was executed between the parties and the cheques were issued in favour of his father at Respondent's instance the maintainability of the said plea will be adjudicated by the Trial Court while determining the claims of the plaintiff. However, it cannot be said that the plaint as it stands does not disclose the cause of action in favour of the Respondent against the Petitioner. Further, admittedly no separate claim has been filed by the father of the Respondent for recovery on the basis of the cheques issued by the Petitioner.

8. In addition, since the suit has been filed for rendition of the accounts of partnership firm M/s Gupta Mediscan Centre and the Petitioner and the Respondent are the admittedly the partners of the said firm, the suit filed is maintainable.

9. As noted herein above, the impugned order arises from a commercial suit. The object of the act of 2015 is to ensure expeditious disposal of the commercial suits and for this purpose the statute has circumscribed the right of a party to file revision petitions to ensure that there is no impediment in the conclusion of the trial. The jurisdiction of this Court under Article 227 of the Constitution is not to be exercised for determining the correctness or

otherwise of the impugned order. This Court while exercising its supervisory jurisdiction only examines if the civil court has acted within the limits of its jurisdiction and this Court does not correct errors of fact or law. In the facts of this case this Court is of the opinion that the impugned order does not suffer from any infirmity which would require any interference by this Court.

10. Accordingly, there is no merit in this petition and hence the same is dismissed.

11. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 01, 2023/*rhc/sk*

Click here to check corrigendum, if any