



2023:DHC:7060



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

% **Date of order: 15th September, 2023**

+ **C.R.P. 253/2023, CM APPL No. 47619/2023 & 47620/2023**

MS NISHA @ NISABA GODREJ & ORS. Petitioners

Through: Mr. Rajshekhar Rao, Sr. Advocate
with Mr. Vikash Kumar Jha, Ms.
Sakshi Malhotra, Mr. Nikhil Aradhe,
Ms. Yamini Mookherji and Mr.
Dushyant Kaul, Advocates.

versus

MR CHAITANYA KUMAR RAMPAL Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioners under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), praying as follows:

“A. Allow the present Petition and thereby, set-aside the Impugned Order dated August 07, 2023 passed by the Ld. Additional District Judge, Patiala House Courts, New Delhi in Civil Suit No. 61 of 2021;

B. Allow the present Petition and thereby direct rejection of the Complaint under Order VII Rule, 11 CPC 1908;

C. During the pendency of the present proceedings, stay any proceedings in the Civil Suit bearing No. 61 of 2021 pending



before Court of Additional District Judge, Patiala House Courts, Delhi; and

D. pass such other or further relief as may be deemed fit and proper in the circumstances of the present case.”

2. Brief facts of the case are reproduced herein below:

- a) The petitioners are the Class-II heir of late Sh. H.P.S Mader.
- b) On the basis of the plaint filed by the respondent/ plaintiff, it has been alleged that the petitioners took a loan of Rs.25, 87,000/- from the respondent. It has been further alleged by the respondent in his plaint that on 3rd September 2012, a letter of acknowledgment was drawn up according to which the deceased had received a certain amount from the respondent and had further promised to repay such amount within three to four weeks from the date of the said letter.
- c) The said loan has also been acknowledged by late H.P.S Mader in Memorandums of Understanding (hereinafter referred to as “MOUs”) dated 10th June 2017 and 31st October 2017 has been averred by the respondent in the plaint. Late Sh. H.P.S. Mader issued various cheques amounting to Rs. 25, 87,000/-, in pursuance to the alleged loan and the said cheques were dishonoured due to insufficient funds.
- d) Late Sh. H.P.S Mader expired on 5th February 2020 pursuant to which, the petitioners/defendants being class-II legal heirs of the deceased were served with a legal notice dated 22nd October 2019 under the Negotiable Instrument Act, 1881, for payment of the said amount.



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e) Upon non-payment of the said amount by the petitioners, the respondent filed a civil suit bearing no. 61/2021 on 19th January 2021 against the petitioners.

f) The petitioners, i.e., the defendants before the learned Court below then filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the ground that it does not disclose any cause of action. The learned Trial Court dismissed the said application *vide* the impugned order dated on 7th August 2023. Being aggrieved by the same, the petitioner has approached this Court challenging the impugned order under its revisional jurisdiction.

3. Learned senior counsel appearing on behalf of the petitioners submitted that the plaint filed by the respondent fails to disclose any cause of action since the respondent has impleaded the petitioners as legal heirs of the Late Sh. H.P.S Mader however, the plaint does not adduce any proof regarding the deceased's estate falling upon the petitioners after the death of Late Sh. H.P.S Mader.

4. It is submitted that the amount of the liability is limited to the extent of the estate inherited by the petitioners from late Sh. H.P.S Mader and the petitioners' are not liable for the said amount

5. It is contended that the learned Trial Court lacks the territorial jurisdiction in entertaining the suit since all the petitioners reside in Mumbai.

6. It is submitted that the learned Trial Court failed to appreciate that the plaintiff, in his plaint, has not been able to establish if there is any estate left by the deceased in the favour of the petitioners as per the plaint and the



plaintiff is merely seeking to create an illusory cause of action, which is clearly mislead the learned Trial court.

7. It is further submitted that the impugned order ought to have appreciated that the question of liability of the proposed legal heirs as legal representatives is yet to be decided.

8. It is contended that the petitioners were neither privy to the MOUs, nor to the acknowledgment letter as has been alleged by the respondent in his plaint. It is submitted that the petitioners had no knowledge regarding the transactions alleged between the deceased and the respondent.

9. It is submitted that in view of the aforementioned submissions, the instant petition may be allowed and the impugned order be set aside.

10. Heard learned senior counsel appearing on behalf of the petitioners and perused the record.

11. The brief facts of the case are that the respondent advanced a friendly loan to late Sh. H.P.S Mader which the deceased failed to pay back and the respondent filed a complaint under Section 138 of the Negotiable Instrument Act. On 5th February 2020, the Sh. H.P.S Mader expired and the respondent sent a legal notice to the petitioners being Class- II heirs of the deceased. Upon non-payment of the loan amount by the petitioners, the respondent filed a civil suit against the petitioners.

12. 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 petitioners.



13. 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.

14. In another judgment by the Hon'ble Supreme Court in ***Pandurang Dhondi Chougule v. Maruti Hari Jadhav***, AIR 1966 SC 153, the following was observed:

“10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of



jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

15. It is a settled law that in an application under Order VII Rule 11 of the CPC, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments in the plaint. Order VII Rule 11 of the CPC established a remedy that 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.

16. 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 to reject 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.

17. Therefore, it is evident that the position of law has been crystallised by the Hon'ble Supreme Court by way of catena of judgments which states that in order to reject a plaint 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 averments in the plaint and not the defense taken.

18. 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. 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.

19. Hence, only in cases where there is an error apparent on the face of it, the High Court must interfere with the order of the Trial Court and 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 been reaffirmed by the Hon'ble Supreme Court in ***D. Sasi Kumar v. Soundararajan***, (2019) 9 SCC 282.

20. The scope as discussed hereinabove has also been observed by the Hon'ble Supreme Court in ***Varadarajan v. Kanakavalli***, (2020) 11 SCC 598. The relevant paragraphs of the same are mentioned herein below:

“15. In addition to the nature of proceedings to implead the legal representative to execute the decree, we find that none of the tests laid down in Section 115 of the Code were satisfied by the High Court so as to set aside the order passed by the executing court. The High Court in exercise of revision jurisdiction has interfered with the order passed by the executing court as if it was acting as the first court of appeal. An order passed by a subordinate court can be interfered with only if it exercises its jurisdiction, not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. The mere fact that the High Court had a different view on the same facts would not confer jurisdiction to interfere with an order passed by the executing court. Consequently, the order passed by the High Court is set aside and that of the executing court is restored. The appeal is allowed.”



21. 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.

22. Adverting to the instant petition, it is prudent to peruse the impugned order and the relevant paragraphs of the same are reproduced herein below:

" 7. I have perused the record in the light of the respective arguments.

8. It is a settled law that at this stage, only the pleadings made in the plaint are relevant to decide the fate of application under Order VII Rule 11 of CPC. It has been held in the matter of "Mahadev Prasad Burnwal Vs Atpendra Roy haudhary" AIR 2007 JHAR 88 that while considering the aspect of rejecting a plaint under Order VII Rule 11 of CPC, the court needs to only see whether the plaint discloses the cause of action or not and the question whether the plaintiff has got a valid cause of action or not is not required to be decided.

9. It has been held that the discretion provided under Order VII Rule 11 CPC can be exercised at any stage of trial. It was observed in the matter of "Azhar Hussain Vs Rajiv Gandhi" 1986 (Supp.) HC 315;

"In substance, the argument is that the court must proceed with the trial, record the evidence and only after the trial is concluded that the power under the Code of Civil Procedure for dealing with a defective petition which does not disclose the cause of action should be exercised. With respect to the learned counsel, it is an argument which is it difficult to comprehend. The whole purpose conferment of such power is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court."



10. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in "*Liverpool & London S.P. & I Assn. Ltd. v. M. V. Sea Success I & Am.*" 4 (2004) 9 SCC 512 which reads as:

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed." In *Hardesh Ores (P.) Ltd. v. Hede & Co.* 5 (2007) 5 SCC 614. The Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* 2003(1) SCC 557".

11. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds



specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint. It has been reiterated in number of judicial pronouncements that in case, the plaint does not disclose a clear right to sue and it is manifestly vexatious and merit-less, it should be rejected under Order VII Rule 11 of CPC. The Apex Court observed in the matter of "Swami Atmanand Vs Shri Rama Krishnan Tapovanam" 2005 (10) SCC 51 that in case, clever drafting creates the illusion of a cause of action, it should be nipped in the bud in the first hearing. It has been observed in the matter of "ITC Ltd. Vs Debt Recovery Appellate Tribunal" 1998 (2) SCC 170 that law cannot permit clever drafting which create illusion of a cause of action. It was observed that what is required is that a clear right must be made out in the plaint. The Apex Court further observed that the courts must be vigilant against any camouflage or suppression and determine whether litigation is utterly vexatious and an abuse of the process of law.

12. Coming to the present case, it is the plaintiff's case that he advanced a friendly loan to late Sh. H.P.S.Mader. Defendants are the class-II legal heirs of late Sh. H.P.S.Mader. Plaintiff has categorically mentioned in para-8 of the plaint that defendants are beneficiaries of the estate left behind by late Sh. 1-J.P.S.Mader. Order VII Rule 5 of CPC mandates that plaintiff shall show that defendant is or claims to be interested in the subject matter, and that he is liable to be called upon to answer the plaintiff's demand. On going through the averments contained in the plaint, it is apparent that plaintiff has disclosed the manner in which the defendants are liable to repay the loan taken by late Sh. 1-J.P.S.Mader. Indeed, it is a settled law that in case, a decree is passed in the present matter, the same can be executed only to the extent of estate of deceased. However, that is a matter to be decided at the stage of execution. It does not preclude this court from passing a decree.



13. The matter in controversy is squarely covered by the decision of the High Court of Delhi in the matter of "Sanjeev Jain Vs Rajni DHINGA & Ors." CS (OS) 378/2018, decided on 19.12.2019. The facts of the said case were almost similar to the present case. The only difference being, it was a case filed under Order XXXVII of CPC. In the said matter, similar arguments; were raised by legal representatives, who were impleaded as defendants. The High Court rejected the arguments and decreed the suit against the legal representatives. The observation made by the High Court answers the contention of defendants. The High Court cited with approval the decision in the matter of "Bank of India Vs Industrial Polymer" (1991) 93 BOM LR 218 and "Sarla Devi & Ors. Vs Daya Ram & Ors" 60 (1995) DLT 3 (DB) and made the following observations;

"12. However, a perusal of the Division Bench's judgment of in Bank of India (supra) and Sarla Devi DB (supra) leave no matter of doubt that Order XXXVII suit is maintainable against the LRs and the right to sue survives.

13. The relevant paras of Bank of India (supra) are set out herein below:

"7. Order XXXVII does not exclude from its purview o suit where the heirs and legal representatives of a deceased are party defendants. Nor is there any protection under the Civil Procedure Code to the heirs and legal representatives of a deceased defendant from a decree being passed against them, provided of course, that the right to sue them survives, The protection which Section 52 of the Civil Procedure Code gives to the heirs and legal representatives of a defendant is a protection against the enforcement of a decree against them in execution. Under Section 52, where a decree is passed against a party as the legal representative of a deceased person and the decree is for the payment of money out of attachment and sale of such property. The decree can be executed to the extent of the property of the deceased in his hands. This is a



protection which is granted at the sale of execution. Hence even in a case where a decree is passed against such an heir or legal representative under Order XXXVII of the Civil Procedure Code, the decree can be executed only to the extent of the estate of the deceased coming to his hands. The apprehension of the learned judge in the case of Rajesh Steel Centre (supra) is, therefore, unfounded.

8. In the case of Lallu Bhagvan v. Tribjuvan Motiram (1889) I.L.R 13 Bom. 633 (D.B.), a Division Bench of this Court held that the decree against the legal representatives of a deceased debtor can be passed even if they have not inherited any property. If they have not inherited any property, the only result is that the decree can not be executed against them. This is a matter to be decided at the stage of execution. It does not affect the right of a court to pass a decree. This decision has been followed in the case of Ranjitsingh v. Narmadi (1931) AIR Nagpur 173 where it is held that where an heir of a debtor is sued it is not open to him to raise the plea in course of the suit that he does not hold the assets of the deceased debtor. The plea is confined to execution only.

9. In our view, therefore, the difficulty expressed by the learned single Judge in the case of Rajesh Steel Centre v. Rashmi K. Agarwal (supra) is misconceived. A summary Suit can be filed against an heir and legal representative of a deceased defendant and the provisions of Order XXXVII apply in full to such a suit also. The decree however, can be executed only to the extent of the estate of the deceased in the hands of the judgment debtor. We therefore agree with Variava J. that the summons for Judgment against the heirs of defendant No.3 is maintainable."



14. The above-stated position of law has been reiterated by the High Court of Delhi in the matter of "Sarvesh Bisaria Vs Hari Om Anand (through LRs)" CS (OS) 16012020, decided on 12.07.2020. Thus, the present suit cannot be rejected merely on the ground that the same has been instituted against the legal representative of late Sh. H.P.S.Mader. More particularly, when there are specific pleadings in the plaint that defendants are the beneficiaries of the estate left behind by the deceased. It is a settled law that a decree can be executed only to the extent of the property of deceased in the hands of defendants. The said protection is to be granted at the stage of execution and it does not warrant the rejection of plaint.

*15. Now, coming to the second ground that this court lacks territorial jurisdiction. Plaintiff has specifically mentioned in the plaint that the cause of action arose in New Delhi as the loan was advanced at New Delhi. He has mentioned that the MOUs were executed at New Delhi. He has stated that the cheques handed over by the deceased were presented in the bank at New Delhi. In view of these specific averments, it cannot be concluded that no cause of action arose at New Delhi. The question of jurisdiction appears to be a mixed question of law and facts. The same cannot be decided in a summary manner. Accordingly, the application under Order VII Rule 11 CPC is dismissed.
Announced in the open court on 07.08.2023"*

23. Upon perusal of the impugned order, it is observed that the learned Trial Court had held that the plaintiff has specifically stated in para- 8 of its plaint that the defendants are the beneficiaries of the estate left by the deceased. Order VII Rule 5 of the CPC, mandates that the plaint shall



enunciate that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand.

24. On the aspect of territorial jurisdiction, the learned Trial Court held that the cause of action arose in Delhi since the loan was advanced in the territory Delhi and that the MOUs were also executed in New Delhi. Moreover, the cheques which were handed over by Late Sh. H.P.S Mader, were presented at the bank situated in Delhi. It was further held by the learned Trial Court that the contention regarding the jurisdiction is a mixed question of fact and law and the same cannot be adjudicated upon by the Court at this stage, in a summary manner.

25. It is held that the learned Trial Court rightly adjudicated upon the issue of cause of action, thereby, stating para – 8 of the plaint, discloses the cause of action for instituting the suit. As per para 8 of the plaint, the respondent has stated that the petitioners being class- II legal heirs of the deceased, have inherited the estate from the deceased, and hence, the petitioner is entitled to the recovery of the amount due from the deceased's estate which have been inherited by the petitioners. Therefore, the plaint discloses a cause of action.

26. Moreover, pertaining to the issue of the territorial jurisdiction of this Court the cause of action arose in Delhi since the loan was advanced by the respondent to the deceased in Delhi, the MOUs were signed in New Delhi and the respondent had presented the cheque given by the deceased to the bank which is situated in the territory of Delhi. The learned Trial Court rightly held that the question of jurisdiction is a mixed question of facts and



law therefore, cannot be adjudicated in a summary manner by the learned Trial Court at the stage of application under Order VII Rule 11 of the CPC.

27. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and not to go into the merits of the case.

28. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. Therefore, in the instant petition, this Court does not find any infirmity in the impugned order as has been alleged by the petitioner.

29. In view of the above discussion of facts and law for the purposes of adjudication of the instant revision petition, the petitioner has not been able to make out a case that requires interference of this Court with the impugned order by way of exercising the revisional jurisdiction under Section 115 of the CPC.

30. In view of the above discussions of facts and law, this Court finds no error in the impugned order dated 7th August 2023, passed in the Civil Suit bearing No. 61/2021, by the learned Additional District Judge, Patiala House Courts, New Delhi and the same is hereby, being upheld.



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31. Accordingly, this petition is thus, dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 15, 2023

pa/db/ryp

Click here to check Corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 27.09.2023
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