



2023:DHC:7211



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 26th September, 2023**
+ C.R.P. 269/2023 & CM APPL. 50103/2023 & CM APPL. 50104/2023
NASIRUDDIN AND ORS Petitioners

Through: Appearance not given

versus

DARGHA HAZRAT SAIYYAD GHASI PEER BABA
JHANIWALE TRUST Respondent

Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC' hereinafter) has been filed on behalf of the petitioners/revisionists seeking the following reliefs:

"i) To call for the records of CS No. 793/2017 titled as Dargha Hazrat Saiyyed Ghasi Peer Baba Jhadi Wale Trust versus Nasiruddin & Ors from the court of Sh. Mayank Mittal, ACJ/CCJ/ARC, East, Karkardoma Court, New Delhi, which is now fixed up for hearing for 22/09/2023.

ii) Be pleased to set/aside/quash/annul the impugned order dated 23/08/2023 passed by the Court of Sh. Mayank Mittal ASJ/CCJ/ARC East, Karkardoma, New Delhi in Civil Suit No. 793/2017 titled as Dargha



Hazrat Saiyyad Baba Jhadi Wale Trust versus Nasiruddi

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

2. The petitioners (defendants in the suit before Trial Court) are former trustees of the trust managing the Dargarh ('suit property' hereinafter) situated at Shakarpur, Delhi. The respondent (plaintiff in the suit before Trial Court) ('respondent Trust' hereinafter) is the Trust registered and responsible for the management of the suit property. Due to some internal conflict among the trustees, the parties had an altercation leading to a dispute on the suit property.

3. Pursuant to the said dispute, the respondent Trust had filed a suit no. 793/2017 for permanent injunction along with an application under Order XXXIX Rule 1 & 2 read with Section 151 of the CPC, for interim relief against the petitioners, thereby, restraining them to offer namaz at the suit property.

4. The learned Trial Court had rejected the prayer for interim relief *vide* order dated 5th June, 2018, and directed the matter to be fixed for arguments on the issue of maintainability of the above said Suit.

5. Aggrieved by the said rejection of the prayer of interim relief, the respondent had filed appeals, firstly, before the Senior Civil judge, and thereafter, before this Court, which were duly rejected.

6. Subsequently, the petitioners filed an application under Order VII



Rule 11 of the CPC, seeking dismissal of the above said Civil Suit on grounds of suit property being a Waqf property, however, the said application was dismissed by the learned Trial Court *vide* the impugned order dated 23rd August, 2023.

7. Aggrieved by the same, the petitioners have preferred the instant revision petition seeking revision of the impugned order.

8. The learned Counsel appearing on behalf of the petitioners submitted that the learned Trial Court erred in appreciating that the suit property belongs to waqf board, therefore, there is no jurisdiction conferred to the Court to decide the suit filed before them.

9. It is submitted that Section 85 of the Waqf Act, 1995 imposes a bar on the jurisdiction of the Civil Court and Revenue Court with regards to the dispute relating to a waqf property.

10. It is also submitted that the respondent had clearly mentioned about the suit property belonging to *Dargah Hazrat Saiyyad Ghasi Peer Baba*, which implies the said property being a Waqf property by virtue of Section 3(r)(i) of the 'Waqf Act, 1995.

11. It is further submitted that the learned Trial Court failed to appreciate the fact that the continuation of the trial of the suit would not serve any purpose.

12. In view of the above arguments, learned counsel for the petitioner prays that the petition be allowed and the reliefs be granted as prayed.

13. Heard the learned counsel for the petitioner and perused the records.

14. It is the case of the petitioners that the suit filed by the respondents for



the permanent injunction against them is for the suit property which is a waqf property, therefore, the learned Trial Court does not have any jurisdiction to adjudicate upon the Suit filed by the respondent.. In pursuance to the said grounds, the petitioners had filed an application under Order VII Rule 11 of the CPC, seeking rejection of the respondent's suit.

15. Before getting into the merits of the case, it is imperative to look into the scope of revision under Section 115 of the CPC. The said provision is reproduced herein:

115. Revision-

[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision,



would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

[Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.]

16. On bare perusal of the above provision, it is clear that the High Court can only interfere with the orders of the Subordinate Court if the court has committed illegality or material irregularity in exercise of its jurisdiction. It is imperative to note that under the revisional powers, this Court cannot delve into the findings on the facts by the Subordinate Court and can only interfere if any infirmities are found in the exercise of jurisdiction of the Court below and not when such Courts erroneously decide the cases.

17. The primary object of the revisional powers conferred to the High Court is to prevent subordinate Courts from acting arbitrarily, capriciously and illegally while they exercise their jurisdiction. The objective and scope of revisional powers under Section 115 of the Code has been discussed by the Courts in a catena of judgments. In ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807***, the Hon’ble Supreme Court delved into the aspect of limited revisional powers given to the High Court



under Section 115 of the CPC and held as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this



question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

18. In ***Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur***, (2009) 5 SCC 162, the Hon’ble Supreme Court decided the issue related to the jurisdiction of a Court in a civil revision petition and held that the jurisdictional questions may not arise only when the Courts act wholly without jurisdiction, but can also arise where other jurisdictional errors are committed by a Subordinate Court. The relevant paragraph is reproduced herein:

*“43. A civil revision application although must necessarily having regard to the terminologies used in Section 115 of the Code of Civil Procedure involve the question of jurisdiction, the question which would arise is as to what are the jurisdictional questions. A jurisdictional question may arise **not** only when a court acts wholly without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There are various facets of “jurisdictional errors”. Taking into consideration any irrelevant fact or non-consideration of a relevant fact would involve jurisdictional issue.”*

19. Hence, from the foregoing discussion, it is clear that the High Courts have a limited scope under Section 115 of the CPC whereby the Courts can only decide the revision petition if the question involves the jurisdiction conferred to the Subordinate Courts

20. Now coming to the present case, the petitioners had filed an application under Order VII Rule 11 of the CPC, for dismissal of the suit on



grounds of the suit property being a waqf property, and due to the said reason the learned Trial Court is not empowered to decide the Suit, however, the said application was dismissed by the learned Court on the grounds that the application filed under said provision has a very limited scope where the suit can only be dismissed on the basis of the plaint and the documents annexed thereto.

21. Since the grounds taken by the petitioners were not part of the averments made in the plaint filed by the respondent before the learned Trial Court, the learned Court below had rejected the petitioner's application. The operative part of the impugned order is reproduced herein:

*"In between dates, reply to the application under Order 7 Rule 11 CPC filed on behalf of the plaintiff. Argument heard on application under Order 7 Rule 11 CPC. The counsel for defendant no. 1, 7 and 8 i.e. applicants have submitted that **present** plaint is liable to be rejected under Order 7 Rule 11 CPC as the property in question belongs to WAQF. Counsel has relied upon a "Gazette notification", copy of which is annexed with the application.*

*Counsel for plaintiff has vehemently opposed the application and has submitted that it is trite law that for the purpose of application under Order 7 Rule 11 CPC only the plaint and **documents** annexed with the plaint are to be considered. Neither WS nor any document filed by the defendant can be taken into the consideration. Counsel for plaintiff has relied upon the judgment of Hon'ble High Court of Delhi titled as "AB Towers Private Limited Vs. Delhi Apartments PVT. LTD. &Ors, CS(COMM) 62/2021, to assert that the defendant has to confine itself to the plaint and documents annexed with the plaint.*



*This is a settled law that for deciding application under Order 7 Rule 11 CPC court cannot go beyond the plaint and documents annexed with the plaint. The applicants have not **pointed** out anything in the plaint or documents annexed with the plaint from which it can be ascertained that property belongs to WAQF. No other ground has been pleaded to argue on application under Order 7 Rule 11 CPC on behalf of the applicants for rejection of plaint. Accordingly, no merit is found in the application and application under Order 7 Rule 11 CPC filed by defendant no. 1, 7 and 8 is hereby dismissed.*

Part arguments heard on the maintainability of the suit on the ground whether the present suit is of civil nature or not on behalf of the defendant no. 1, 7 and 8 and defendant no. 4. Adjournment is requested by defendant no. 1, 7 & 8 and defendant no. 4 for bringing relevant case law so as to show that question or dispute whether the right to offer Namaz at a particular place is a purely religious issue or is an issue of civil nature.

At request, matter is adjourned for 08.09.2023.”

22. On perusal of the aforesaid order, it is crystal clear that the learned Trial Court had rightly interpreted the law regarding the rejection of the plaint under Order VII Rule 11 of the CPC. Furthermore, it is also clear from the above order that the suit is pending at the stage of adjudication on the question of maintainability.

23. Therefore, it is amply clear that the issues raised by the petitioner for the rejection of the plaint shall be extensively dealt with by the Trial Court at the time of deciding the maintainability of the suit and at that stage, the learned Trial Court would deal with the contentions made by the petitioners regarding the issue of the suit property belonging to the waqf board.



24. Even though the impugned order clearly indicates the settled principle regarding the scope of application under Order VII Rule 11 of the CPC, it is pertinent for this Court to reiterate the same. The said provision reads as follows:

"11. Rejection of plaint-The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

(e) where it is not filed in duplicate; where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

25. On perusal of the aforesaid provision, it is clear that Order VII Rule 11(d) CPC provides that the plaint shall be rejected 'where the suit appears



from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

26. As per material on record, the plaint filed by the respondent Trust does not suggest that the suit property is a Waqf Property. Even though the petitioners have contended that the suit filed by the respondent mentions the suit property as *Dargah Hazrat Saiyyad Ghasi Peer Baba*, which infers the property belonging to the Waqf, however, it is not evident that the said inference needs to be made without any such clear establishment.

27. The discussion in the foregoing paragraphs clearly establishes that the learned Trial Court considered the arguments and objections raised on behalf of the petitioners in their application filed under Order VII Rule 11 of the CPC and also appreciated the law laid down *qua* the objections so raised. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers.

28. Therefore, keeping in view the facts, circumstances, the arguments advanced as well as the contentions raised and also the scope of revisional powers settled by law and reiterated by the Hon’ble Supreme Court, this Court is not inclined to allow the instant revision petition. There is no error



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in the impugned order, dated 23rd August, 2023 that warrants interference by this Court in exercise of its revisional powers under Section 115 of the CPC.

29. Accordingly, the instant petition stands dismissed.
30. Pending applications, if any, also stands dismissed.
31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 26, 2023
gs/av/ryp

Click here to check corrigendum, if any