



2023:DHC:7215



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

% **Date of order: 26th September, 2023**

+ **C.R.P. 270/2023 & CM APPL. 50119/2023 & CM APPL. 50120/2023**

KUNTA

..... Petitioner

Through: **Mr. Shambhu Nath Kumar, Advocate**

versus

SANJU MISHRA AND OTHERS

..... Respondents

Through: **Ms. Shilpa Dewan, Advocate for R-6/MCD**

Ms. Pavitra Kuar, Advocate for R-7

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 petitioner/revisionist seeking the following reliefs:

"a. Set aside the impugned order dated 05.08.2023 passed by Sh. Ajay Kumar Malik ASCJ CUM JSCC CUM GUARDIAN Judge Dwarka Court, New Delhi in CS SCJ 630/2018 and allow the present revision petition.

b. Summon and call for the record of suit no. CS SCJ 630/2018 titled as Sanju Mishra Vs. Rajbir & Ors. pending in the court of Sh. Ajay Kumar Malik ASCJ CUM JSCC CUM GUARDIAN JUDGE Dwarka Court New Delhi.



c. Pass such other and further orders as this Hon'ble court may deem fit in fact and circumstance of the case."

2. The parties in the present petitioner are neighbors residing in Bharat Vihar Colony, Kakrola, New Delhi. The respondent no. 1 (plaintiff before the Trial Court) had filed a suit before the Trial Court for permanent and mandatory injunction seeking demolishing of the house ('suit property' hereinafter) on the grounds that the suit property is an unauthorized construction.
3. During the pendency of the said suit, the petitioner (defendant before the Trial Court) had filed an application under Order VII Rule 11 of the CPC on grounds that the suit is barred by Section 9 of the CPC.
4. The learned Trial Court rejected the application *vide* order dated 5th August, 2023 and held that the scope of rejection of plaint under the said provision is limited and the perusal of plaint suggest *locus standi* and cause of action to file the suit.
5. Aggrieved by the same, the petitioner has preferred the present revision petition.
6. The learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in rejecting the application as there is express or implied bar to the jurisdiction of Civil Court.
7. It is submitted that the Section 347A of the Municipal Corporation Act, 1957 provides for constitution of Appellate Tribunal for adjudication of the subject matter of the said dispute, which was duly constituted in the



present matter. Furthermore, an appeal has been pending against the order of the Commissioner of the respondent Corporation.

8. It is also submitted that the Delhi Municipal Corporation Act, 1957 ('the Act' hereinafter) provides for a specific forum for the adjudication of the dispute and Section 9 of the CPC bars the Civil Courts to entertain and adjudicate the subject matter of the dispute.

9. It is further submitted that the case relied upon by the learned Court for the dismissal of the application is in favor of the petitioner whereby the Coordinate Bench of this Court had dismissed the suit filed for permanent and mandatory injunction.

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

11. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 6 ('respondent Corporation' hereinafter) vehemently opposed the petition submitting to effect that the learned Trial Court had rightly rejected the application as Order VII Rule 11 of the CPC has a limited scope whereby, the plaint along with the documents can only be relied upon for the adjudication of the application.

12. Therefore, in view of the foregoing submissions, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

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

14. It is contented by the petitioner that the suit property is situated in an unauthorized colony and the said colony has a protection from demolition by the special law i.e. 'National Capital Territory of Delhi Laws (Special



Provision) Second Amendment (Ordinance) 2020' and the dispute between the parties is already pending before the appropriate authority.

15. Before analyzing the impugned order, it is opposite to look into the scope of dismissal of suit in an application filed under Order VII Rule 11.

The said provision is reproduced herein:

“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.”



16. On perusal of the aforesaid, it is clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint and the Trial Court can exercise the power under Order VII 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.

17. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of CPC the averments in the plaint are germane and the plea 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 VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.

18. The said legal principle has been extensively dealt with by the Hon'ble Supreme Court and various High Courts of the country and prevail as a settled principle of law. In ***Popat and Kotecha Property v. State Bank of India Staff Assn.***, (2005) 7 SCC 510, the Hon'ble Supreme Court reiterated the position regarding limited scope of the said provision and held as under:

“13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code 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 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 Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. *In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.*

16. *The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)*

17. *It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*

18. *In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*

19. *There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true*



import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

19. On perusal of the above paragraphs of the cited judgment, it is clear that in order to consider Order VII 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 scrutinize the averments/pleas in the plaint. In other words, what need 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 averment.



20. In the instant case, the petitioner had preferred the application under the said provision of the CPC claiming the suit to be barred by the jurisdiction, however, the learned Trial Court rejected the said contention as the perusal of the plaint does not suggest any such bar on the jurisdiction of the learned Trial Court.

21. As per material on record, it is also clear that the averments made by the respondent neither talks about the suit pending before the appropriate authority, nor does the jurisdictional bar can be inferred, rather it is clearly made out that the plaint is regarding the alleged illegal construction done by the present petitioner on the suit property.

22. Furthermore, the contentions made by the petitioner in the application could not have been relied upon by the learned Court, therefore, mere perusal of the plaint and the documents annexed with the said plaint would not have concluded the case to be barred by jurisdiction.

23. In the instant revision petition, the petitioner has raised the issue of jurisdiction conferred to the Court below to decide the suit filed for the recovery of possession. Therefore, it is imperative to analyze whether the learned Trial Court committed any error by rejecting the application filed by the petitioner. The impugned order is reproduced herein:

“For purpose of disposing the application u/o 7 Rule 11 CPC, the court is required to look into the averments made in the plaint and not on the averment made in the WS or any document filed by the applicant/defendant. The plain reading of plaint shows that the suit property and the residence of plaintiff are adjacent to each other and also bears the consecutive property



numbers. In view of the decision of Rajendra Motwani & Anr. Vs MCD & Ors. 2017 SCC Online Del 11050 dated 16.10.2017, the plaint has locus standi and cause of action to file and continue with the present suit. The ground stated in the application do not attract the provisions contained u/o 7 rule 11 CPC to reject the plaint of plaintiff. Accordingly, the application dismissed. Matter is adjourned for arguments on application u/o 12 Rule 6 CPC (filed by plaintiff). It be re-listed on 23.09.2023.”

24. On perusal of the aforesaid paragraphs, it is made out that the Learned Trial Court had duly taken the averments made in the plaint into consideration and thereafter rejected the application on the law applicable on the issues raised by the petitioner and therefore held that since the properties are adjacent to each other, there arise cause of action.

25. There is no doubt that the scope of revision powers conferred to this Court clearly provides for determination of the question of jurisdiction conferred to the Subordinate Courts, however, the perusal of the impugned order, plaint and the other annexed documents clearly suggest that the suit filed before the Trial Court was not only limited to the demolition of the construction, rather also included the prayers seeking permanent restrain on the petitioner and his family members from raising subsequent illegal and unauthorized construction on the suit property thereby clearly establishing cause of action and *locus standi* before the learned Trial Court.

26. In the plaint filed by the respondent no. 1, the respondent has pleaded in paragraph 8 for restraining the occupants of the suit property to raise



2023:DHC:7215



illegal construction which directly affects the neighbors, i.e. the respondent no. 1. Furthermore, the subsequent paragraph of the plaint also suggested inaction on part of the respondent Corporation and the Police Authorities. Therefore, raising cause of action to approach the Court.

27. Therefore, keeping in view the facts, circumstances, the arguments advanced as well as the contentions raised and also the scope of revision powers settled by law, this Court is not inclined to allow the instant petition. There is no error in the impugned order, dated 5th August, 2023, that warrants interference by this Court in exercise of its revisional powers under Section 115 of the CPC.

28. Accordingly, the instant petition stands dismissed.

29. Pending applications, if any, also stands dismissed.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 26, 2023

gs/av/db

Click here to check corrigendum, if any