



2023:DHC:7433



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

% **Date of order : 3rd October, 2023**

+ **C.R.P. 273/2023**

M/S CREATING IMAGINATIONS Petitioner

Through: **Mr. Shashank Singh, Advocate**

versus

M/S ALPHA RADIOS Respondent

Through: **Nemo**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 50759/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

CM APPL. 50760/2023 (Delay)

1. This is an application under Section 5 of Limitation Act, 1963 for condonation of delay in filing the captioned revision petition.

2. For the reason stated in the application, the delay of 16 days in filing the captioned revision petition is condoned.

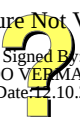
3. The application is disposed of.

C.R.P. 273/2023

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed on behalf of the

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petitioner seeking the following reliefs:-

“a) Set aside the Judgment and Impugned Order dated 07.06.2023 passed by Ld. Ms. Neha Garg, Civil Judge - 01, (Central), Tis Hazari, Delhi in in CS SCJ 1766/22 and allowed the Application under Order VIII Rule 11 Read with Section 151 C.P.C filed by the Petitioner.

b) Pass any other or further Order(s) as this Ld. Court may deem fit and proper in the given circumstances of the case, in the interest of Justice.”

2. The respondent, i.e., the plaintiff before the learned Trial Court had filed a Civil Suit bearing No. CS SCJ 1766/22, seeking recovery of Rs. 41,200/- from the petitioner, i.e., the defendant before the learned Trial Court. The said Civil Suit is pending for adjudication before the learned Civil Judge- 01, (Central), Tis Hazari, Delhi.

3. In the above said Civil Suit, the petitioner had filed an application under Order VII Rule 11 read with Section 151 of the CPC, seeking rejection of the respondent's plaint on the ground that the respondent has failed to disclose any cause of action against the present petitioner and that the learned Trial Court lacks the jurisdiction to try the said Suit.

4. The aforementioned application of the petitioner was dismissed by the learned Trial Court vide impugned order dated 7th June 2023. Being aggrieved by the same, the petitioner has approached this Court under its revisional jurisdiction.

5. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to take into consideration the entire facts and circumstances pertaining to the instant dispute.

6. It is submitted that the learned Trial Court erred in not appreciating

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the fact that it lacks the territorial jurisdiction to try the concerned suit since the cause of action for the same arose outside the territorial jurisdiction of the learned Trial Court i.e., in Noida, Uttar Pradesh.

7. It is submitted that the suit filed by the respondent cannot be entertained by the learned Court below as the respondent has failed to show that the cause of action arose within the territorial limits of Delhi.

8. It is submitted that the petitioner has no relation with the respondent as mentioned in the above said Civil Suit. The contention of the respondent is misconceived and baseless since the respondent has failed to produce any relevant documents that would show that the petitioner indulged with the respondent in any sort of business transaction as has been alleged by it.

9. It is submitted that the learned Trial Court erroneously asserted that as per the contents of the plaint the respondent had engaged the petitioner's services and certain meetings between the parties took place at the respondent's former registered office at Chandini Chowk.

10. It is further submitted that in the suit for recovery, the respondent has conspicuously failed to provide any form of documentation or tangible evidence that would validate the existence of a financial transaction between itself and the petitioner. It is further submitted that a considerable void exists in the respondent's effort to establish the essentials required to justify the respondent's pursuit of the said suit for recovery with respect to the cause of action to initiate the same.

11. It is submitted that the petitioner has a reasonable plea to get the said suit for recovery dismissed, as the learned Trial Court failed to appreciate that there is no pre-existing relationship between the parties. Hence, there is no basis for filing of the said recovery suit.

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12. It is submitted that the petitioner had conducted the business with one Mr. Saurabh Pandey of M/s Nikon System Pvt. Ltd., whose registered office is at C-5, Sector 10, Noida, Gautam Buddha Nagar,

13. It is further submitted that pertinently the email correspondence annexed by the petitioner as Annexure P-3 with the instant petition, is of utmost significance as the same portrays the alleged interaction or communication between the petitioner and the respondent. However, upon close examination, it is evident that the said correspondence does not establish a definitive and substantive relationship between the petitioner and the respondent whereas, it proves that whatever business transaction took place was with Mr. Saurabh Pandey of M/s Nikon System Pvt. Ltd., at its Noida office, thereby, stating that the respondent's suit lacks cause of action.

14. It is submitted that the learned Court below failed to delve deeper into the facts and circumstance of the instant dispute and further failed to consider that there is no substantive and legitimate relationship between the petitioner and the respondent.

15. It is submitted that as per the averments in the foregoing paragraphs, it is evident that the suit filed by the respondent is based on baseless contentions and since the actual cause of action arose in Noida, therefore the learned Trial Court has no jurisdiction to try the above said Civil Suit due to the lack of cause of action.

16. It is submitted that in view of the preceding paragraphs, the instant petition may be allowed and impugned order be set aside since the learned Trial Court erred in exercising its jurisdiction while deciding the petitioner's application under Order VII Rule 11 of the CPC.

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17. Heard the learned counsel appearing on behalf of the petitioner and perused the record.

18. Before delving into the facts of the instant petition, it is pertinent to discuss the relevant laws applicable to the facts of the matter at hand.

19. Order VII Rule 11 of the CPC, the provision under which the present impugned order has been passed, empower the Courts to reject a plaint, if only from the averments in the plaint, it is evident that the plaint is liable to be rejected. The basic settled legal principle behind the said provision is that if on an entire and meaningful reading of a plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 CPC. The said legal proposition was enunciated by the Hon'ble Supreme Court in the judgment passed in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467.

20. In the matter of *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422, the Hon'ble Supreme Court has further reaffirmed the scope of provisions stating rejection of the plaint and held as under:

“17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , where this Court, in para 11, observed thus : (SCC p. 714, para 11)

“11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear 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 under Order 7 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. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas 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 7 Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.'

It is clear that in order to consider Order 7 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 scrutinise the averments/pleas in the plaint. In other words, what needs 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 averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100]."

21. On perusal of the abovementioned judgments, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC, is concerned, for rejection of a plaint, the relevant facts which need to be looked into for adjudicating upon an application thereunder are the averments made in the





plaint.

22. Order VII Rule 11 of the CPC, has established a remedy which is purely independent and 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. Instead, the word 'shall' is used, clearly implying, thereby, it obligates a duty upon the Court in rejecting 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.

23. Before proceeding further, this Court will briefly revisit the scope and extent of 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.

24. It is a settled principle of law that if the erroneous decision by a subordinate Court result 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. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

25. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption





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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 shall not interfere merely, because the Court below has wrongly decided a particular application in a suit as not maintainable.

26. The plea of the revisionist can only be held to be maintainable where it is found that 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.

27. 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.

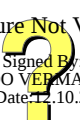
28. Now advertng to the facts of the present petition.

29. The petitioner has contended that he had filed an application under Order VII Rule 11 of the CPC, before the learned Trial Court, seeking rejection of the respondent's plaint on the ground that the learned Court below lacks the jurisdiction to try the above said Civil Suit.

30. The petitioner has contended the same on the ground that he never visited the premises of the respondent in Chandini Chowk. It has been further averred by the petitioner that he never dealt with the respondent, instead, all the conversations and transactions took place with one Mr. Saurabh Pandey of M/s Nikon Systems Pvt. Ltd. in Noida, Uttar Pradesh.

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The petitioner in this regard has contended that the respondent failed to produce any document before the learned Court below that would justify the alleged cause of action accruing in its favour and against the petitioner, for filing the above said Civil Suit.

31. It has been argued on behalf of the petitioner that since he only dealt with Mr. Saurabh Pandey and that too at the Noida office, the learned Trial Court does not have the jurisdiction to try the said Civil Suit in view of the fact that the transaction giving rise to the alleged cause of action took place in Noida, which is outside the learned Trial Court's jurisdictional limits.

32. The learned Trial Court had dismissed the application filed by the petitioner vide the impugned order dated 7th June 2023, relevant paragraphs of which have been reproduced hereunder:

“From a bare perusal of the application u/0 VII Rule 11 CPC, it appears that defendant is trying to get the plaint of the suit rejected on the basis of his defence. Plaintiff has specifically averred in the plaint that it had engaged the services of defendant and certain meetings between the parties were held at the formerly registered office of plaintiff in Chandni Chowk. As stated earlier, only the averments made in the plaint are to be looked into for adjudication of an application u/0 VII Rule 11 CPC and the defence of defendant cannot be considered for the said purpose.

Accordingly, application u/Q VII Rule 11 CPC is dismissed.”

33. Upon a bare perusal of the above quoted impugned order, it is observed by this Court that whilst adjudicating upon the petitioner's application under Order VII Rule 11 of the CPC, the learned Trial Court passed a detailed and reasoned order. The learned Court below stated that as per the settled legal principles, the Court has to only consider the averments made in the plaint and the contentions raised either in the written statement





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or the application under Order VII Rule 11 of the CPC itself, cannot be considered, for rejection of a plaint. While following the said law point, the learned Court below proceeded to dismiss the petitioner's application since, it found that as per the averments made in the plaint, no ground is being made out for rejecting the same.

34. It has been observed by this Court that the respondent, i.e., the plaintiff before the learned Court below, has specifically averred in its plaint at paragraph no. 1 and 15, that it had engaged the services of the petitioner, i.e., the defendant before the learned Court below and certain meetings between the parties were held at the formerly registered office of respondent which is at 1900, Chandini Chowk, new Delhi-110006.

35. As stated above, only the averments made in the plaint are to be looked into for adjudication of an application under Order VII Rule 11 CPC, and the Court's power are restrained, as per which the Court cannot go beyond the contents of the plaint for deciding an application for rejection of a plaint.

36. It is evident that while considering the averments made in the plaint, the right to file the above said Civil Suit accrued in favour of the respondent within the territorial jurisdiction of Delhi, as the meeting took place in Chandini Chowk. Since, it has been established that only the averments made in the plaint are germane, therefore, the learned Trial Court did not exercise its jurisdiction in contravention to the settled law.

37. In light of the above, this Court is of the view that while adjudicating the petitioner's application filed under Order VII Rule 11 of the CPC, the learned Trial Court rightly decided the same and in consonance with the law laid down by the Hon'ble Supreme Court.

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38. This Court, does not find any force in the propositions put forth by the petitioner and, is of the view that the petitioner has failed to make out his case to seek the intervention of this Court under its revisional jurisdiction.

39. 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, therefore, calling for the intervention of this Court under Section 115 of the CPC.

40. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 7th June 2023, passed by the learned Civil Judge- 01, (Central), Tis Hazari, Delhi, in Civil Suit bearing No. CS SCJ 1766/22.

41. For all the aforesaid reasons, no merit is found in this revision petition and the same is accordingly dismissed along with the pending applications, if any

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 3, 2023

Dy/ryp/db

Click here to check corrigendum, if any

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