



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

% **Date of order: 17th August, 2023**

+ C.R.P. 63/2017 & CM APPL. 9446/2017 & CM APPL. 9448/2017
MANISHA TYAGI @ MANISHA SHAH Petitioner

Through: Ms. Tanisha Kaushal, Advocate

versus

BALJEET SINGH & ANR Respondents

Through: Ms. Deepika, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"i. Allow this Petition and set aside impugned order/judgment dated 03.11.2016 passed by Shri Prashant Kumar ADJ-04 (NW) Rohini Courts, Delhi in New CS No. 577886 of 2016 whereby the LD. Judge is pleased to dismiss the Application of the Petitioner U/o VII Rule 11 CPC seeking rejection of the Plaint and allow the same rejecting the Plaint for the suit barred by limitation.

ii. Pass such other and further order as this Hon'ble court may deem fit in the interest of justice."

2. The present revision petition is against the impugned order dated 3rd



November 2016, passed by the learned ADJ-04 (NW), Rohini Court, New Delhi in Civil Suit bearing No. 577886/2016, whereby, the application under Order VII Rule 11 (a), (b) & (d) of the CPC, filed by the petitioner was dismissed.

3. A Collaboration Agreement dated 26th April 2008, was executed between Late Smt. Shobha Shah (mother of the petitioner) and the respondent. As per the said agreement, the respondent was to demolish and reconstruct the subject property of the suit, wherein, both the parties were to get certain portion of the property after the said construction. Late Sh. Shobha Shah expired on 19th December 2011.

4. The respondent i.e., the plaintiff before the learned Trial Court had filed a suit seeking specific performance of the Collaboration Agreement and permanent injunction on 28th January 2014, arraying the mother of the petitioner, Late Smt. Shobha Shah (defendant No. 1 before the learned Trial Court) and her three children as legal heirs including the petitioner i.e., the defendant No. 2 before the learned Trial Court.

5. The petitioner filed an application under Order VII Rule (a), (b) & (d) of the CPC, on 22nd May 2014, seeking rejection of the plaint on the grounds of lack of cause of action, undervalued relief and suit being barred by law. The said application was dismissed by the learned Court below *vide* impugned order dated 3rd November 2016. Aggrieved by the said dismissal, the petitioner has invoked the revisional jurisdiction of this Court.

6. Learned counsel appearing on behalf of the petitioner submitted that the present petition has been filed seeking revision against the impugned



order dated 3rd November 2016, passed by the learned ADJ-04 (NW), Rohini Court, New Delhi, in Civil Suit bearing No. 577886/2016, whereby, the application under Order VII Rule 11 (a) (b) (d) of the CPC, was wrongly dismissed by the learned Trial Court.

7. It is submitted that the learned Trial Court failed to appreciate the contentions made by the petitioner and also the averments made in the plaint on the fact that the cause of action first arose when the plaintiff realised and acknowledged the non-cooperation from the defendant and thus, the period of limitation began on the date when the cause of action first arose i.e., in July 2008.

8. It is submitted that as per the terms of the agreement, it was the duty of the respondent to get the subject property converted into freehold before seeking possession, which the respondent never did, allegedly for the reason that the deceased defendant No. 1 had not signed the necessary documents on his demand in July 2008 or 2009.

9. It is submitted that the Suit filed by the respondent is after a fragrant delay of five years i.e., since the execution of the Agreement. Further, the cause of action arose when the deceased defendant No. 1 failed to execute the documents as required under the Agreement. The respondent could have filed the suit in the year 2008 seeking specific performance of the Agreement thereby, directing the deceased defendant No.1 to execute documents as required and necessitated under the Agreement.

10. It is further submitted that the learned Trial erred in passing the impugned order. It failed to consider the facts and circumstance in its



entirety. The respondent kept silent for a period of five years and out of nowhere, filed a suit seeking specific performance of the Agreement.

11. It is submitted that in view of the foregoing submissions, the impugned order dated 3rd November 2016, passed by the learned ADJ-04 (NW), Rohini Court, New Delhi, in Civil Suit bearing No. 577886/2016, wherein, the application under Order VII Rule 11 (a) (b) (d) of the CPC, was wrongly dismissed by the learned Trial Court is erroneous and is liable to be set aside.

12. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the arguments and averments made by the petitioner and further contended that the present petition is an abuse of process of law, and hence, is liable to be dismissed.

13. It is submitted that the petitioner has not raised any ground permissible under Section 115 of the CPC, and the same has been filed with *malafide* intentions.

14. It is submitted that the necessary averments with reference to the cause of action have been made in the plaint by the respondent and the same had satisfied the learned Trial Court.

15. It is submitted that the learned Trial Court has rightly passed the impugned order by stating that in order to reject a plaint under Order VII Rule 11 (d) of the CPC, it is the knowledge of the cause of action which matters in specific performance suits.

16. It is further submitted that the respondent approached the petitioner and the other defendants in 2008 & 2009 for execution of certain documents



so that the obligations under the Collaboration Agreement could be performed by the respondent. But the same could not be concluded due to the unavailability of the deceased defendant No. 1.

17. It is submitted that in the month of October 2012, the respondent again approached the petitioner seeking whereabouts of the defendant No. 1 and possession of the subject property as per the said agreement, but the same was refused by the petitioner. It is further submitted that the cause of action to file the suit seeking specific performance arose upon such refusal by the petitioner.

18. It is submitted that the learned Trial Court has exercised its discretion judicially and fairly, and has correctly passed the impugned order. The said order is according to the principles of natural justice and equity.

19. In view of the foregoing submissions, it is submitted that the present petition be dismissed since there is no infirmity in the impugned order dated 3rd November 2016, passed by the learned ADJ-04 (NW), Rohini Court, New Delhi, in Civil Suit bearing No. 577886/2016.

20. Heard learned counsel for the parties and perused the record.

21. Before advertng to the relevant provisions of law, it is necessary to briefly revisit the facts of the instant petition.

22. A Collaboration Agreement dated 26th April 2008, was entered into between the deceased defendant No. 1 and the respondent for reconstruction of the subject property.

23. It is the case of the petitioner that the respondent had filed the suit in the year 2014, seeking specific performance before the learned Trial Court,



after the limitation period of three years had expired. It has been contended by the petitioner that the cause of action for filing the suit first arose in the year 2008, when the respondent approached the petitioner seeking whereabouts of the deceased defendant No. 1.

24. It has also been contended that the petitioner filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the ground that there is a lack of cause of action, undervaluation of the suit and the suit being barred by limitation. During the course of arguments of the petitioner's application, it was noted by the learned Trial Court that the petitioner did not press upon the issue of the cause of action and undervaluation of the suit. The application was further argued only on the ground that the suit is barred by the limitation since the cause of action first arose in 2008 and the respondent had filed the suit in 2014, hence, the same is in violation of the Limitation Act, 1963, thereby, the plaint is liable to be rejected.

25. The application under Order VII Rule 11 of the CPC, was dismissed by the learned Trial Court *vide* the impugned order dated 3rd November 2016. The relevant paragraphs of the impugned order are reproduced herein:

“From the bare perusal of this provision, it is reflected that it is the date of knowledge which matters in such circumstances from which the cause of action is stated to have been started. It is a matter of record that as per collaboration agreement, no specific time frame has been agreed in between the parties, therefore, I am of the considered opinion that time is not the essence, of the contract. It is also reflected from the record that plaintiff has allegedly made payment of Rs. 4 Lacs and has



further alleged that defendants are not performing their part of contract by converting the property from leasehold to freehold. Thus, from the submissions made in the plaint itself, it is reflected that the contract in between the parties is voidable which is alive at the option of the plaintiff as per law. In such circumstances, therefore, as time is never the essence of the agreement, hence, plaintiff has the option to keep waiting for performance of the agreement Para no.26 of the plaint is perused again, vide which all the facts and circumstances are mentioned in detail. The para no.29 of the collaboration agreement is also perused. Same fact is being reflected in this para that time is not the essence of the agreement in between the parties. In these circumstances, considering the facts alleged in para no.26 of the plaint as well as para no.29 of the collaboration agreement, I am of the opinion that plaintiff kept waiting for performance of the agreement on the part of defendant till October, 2012 hence, in such circumstances, the cause of action cannot be said to have been started from 26.04.2008 i.e the date of the collaboration agreement which do not contemplate the time as essence of the contract. The present suit has been filed as per record on 29.01.2014 therefore, the suit is filed well within the period of limitation, hence, the application filed u/0 7 Rule 11 CPC on behalf of defendant no.2 is dismissed.”

26. The learned Trial Court dismissed the application of the petitioner on the ground that the respondent filed the suit as and when he had the knowledge regarding the non-performance on the part of the defendants. The learned Court below further noted that on a bare perusal of the said Collaboration Agreement, it is found that time is not the essence of the said agreement. Thus, the respondent had the option to keep waiting for the performance of the agreement. The averments made in the plaint of the



respondent are mentioned in detail and the facts thereto further reflect that time is not the essence of the contract between the parties of the suit. It was finally observed by the learned Court below while passing the impugned order that the respondent waited for the performance on the part of the defendants till October 2012. Hence, in such circumstances, the cause of action cannot be said to have started on 26th April 2008, i.e., the date of execution of the Collaboration Agreement which does not contemplate time as an essence of the contract. The suit being filed on 29th January 2014, is well within the limitation period which started in October 2012, when the respondent approached the defendants seeking possession of the subject property.

27. Now adverting to the relevant provisions of law. The application of the petitioner was filed under Order VII Rule 11 of the CPC, claiming that the suit of the respondent be rejected as the same is barred by the law. The relevant portion is reproduced herein:

“ORDER VII – PLAINT

Rule 11 – Rejection of plaint – This plaint shall be rejected in the following cases: -

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

28. The Hon’ble Supreme Court has enumerated the extent of exercising discretion and application of judicial mind in an application moved under Order VII Rule 11 (d) of the CPC. It is observed that while considering the application under Order VII Rule 11 of the CPC, the averments in the plaint alone are required to be considered and not the defense or the written



statement filed by the defendant.

29. In any case, the question with respect to the limitation can be said to be a mixed question of law and facts. The evidence is required to be led by both the parties and only thereafter, the issue with respect to the limitation is required to be considered. In ***Raghwendra Sharan Singh v. Ram Prasanna Singh, (2020) 16 SCC 601***, the Hon'ble Supreme Court observing the same, held that a plaint can be rejected under Order VII Rule 11 (d) of the CPC, if by considering the averments, it is found that the suit is clearly barred by the law of limitation.

30. The Hon'ble Supreme Court in the matter of ***Salim D. Agboatwala v. Shamalji Oddhavji Thakkar, 2021 SCC OnLine SC 735***, had further observed that the power with the Courts under Order VII Rule 11 of the CPC, is a radical power conferred in order to terminate any civil action at the threshold, provided it falls under the categories prescribed within the provision. The conditions precedent to such exercise of the power are stringent and especially when rejection of a plaint is sought on the ground of limitation. Therefore, when the plaintiff claims that he gained the knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11 of the CPC.

31. It has been held in the aforementioned judgement that such question of limitation with regard to the contention of the plaintiff that he gained the knowledge only at some specific time, the said issue becomes a triable issue and hence, the plaint cannot be rejected at the threshold.



32. Further, the Hon'ble Supreme Court in ***P.V. Guru Raj Reddy v. P. Neeradha Reddy***, (2015) 8 SCC 331, has held that claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded, will have to be accepted as correct. The relevant paragraph has been reproduced below:

“6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

33. The point with regard to the knowledge of the issue that gives rise to the cause of action, has been taken positively by the Hon'ble Supreme Court in ***Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar***, (2018) 6 SCC 422. The relevant paragraphs have been reproduced herein:

“14. After having cogitated over the averments in the plaint and the reasons recorded by the trial court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the trial court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellant-plaintiffs have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the



registered sale deed as belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the articles from amongst Articles 56, 58, 59, 65 or 110 or any other article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.”

34. This Court is of the view that the ground taken by the learned Trial Court is consistent with the settled legal principles expounded in ***Chhotanben (Supra), T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467*** and various other judgments, wherein, the Hon’ble Supreme Court has enunciated on the aspect of rejection of the plaint and observed that if on a meaningful, informal reading of the plaint it is 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, to adjudicate upon the grounds mentioned therein.

35. The view taken by the learned Trial Court is right and is hereby being upheld. This Court is also of the view that what is relevant for answering the matter in issue in the context of the application under Order VII Rule 11 (d) of the CPC, is to examine the averments in the plaint. The plaint is required to be treated and read as a whole. The defense available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11 (d) of the CPC. Only the averments in the plaint are germane.

36. On a bare perusal of the Collaboration Agreement 26th April 2008, it



is observed that time is not of the essence in the said Agreement. Further, not handing over of the possession of the subject property in accordance to the above said agreement, amounts to non-performance on the part of the defendants and accrual of a cause of action for instituting suit for specific performance in favour of the respondent.

37. Therefore, it is observed that the suit being filed in the year 2014 is well within the limitation period as the cause of action for instituting the suit arose in 2012, when the respondent was denied the possession, hence amounting to non-performance.

38. At this juncture, it is also relevant to consider the limited scope of Section 115 of the CPC, under which the instant petition has been filed. Relying upon the judgment of *D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh*, (1969) 3 SCC 807 which has been reaffirmed in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633, this Court is of the view that the High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable but may interfere if the Court below has exercised its jurisdiction illegally or there is found to be material irregularity in the exercise of jurisdiction by the Trial Court.

39. This Court has powers which can be exercised under Section 115 of the CPC, to set aside any order only if that order suffers from error of jurisdiction. The said error of jurisdiction includes the irregular exercise, or non-exercise of it, or the illegal assumption of it. 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.

40. In light of the foregoing paragraphs and observations, this Court finds no infirmity which suggests that there is any error of jurisdiction in the impugned order dated 3rd November 2016.

41. Therefore, in view of the above discussion of facts and law, this Court finds no error in the impugned order dated 3rd November 2016, passed by the learned ADJ-04 (NW) Rohini Court, New Delhi, in Civil Suit bearing No. 577886/2016.

42. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 17, 2023
gs/ryp

Click here to check corrigendum, if any