



2023:DHC:8432



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

% **Date of order : 31st October, 2023**

+ **C.R.P. 312/2023**

PREM SINGH AHLAWAT & ANR. Petitioners

Through: Mr.____, Advocate (Appearance not given)

versus

YADRAM Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 55783/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

C.R.P. 312/2023 & CM APPL. 55782/2023 (Stay)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 has been filed on behalf of petitioners seeking the following relief:-

"It is therefore most respectfully prayed that this Hon'ble court may kindly be pleased to set-aside the order dated 16.08.2023 passed by Sh. Anuj Aggarwal then ADJ Dwarka Court New Delhi and dismiss the suit vide CS no. 820/2019 titled as



"Yadram versus Prem Singh Ahlawat & Another" pending in the court of Ms Shilpi M Jain ADJ Dwarka Court New Delhi with next date of hearing 01.11.2023 with heavy cost in the interest of justice..."

2. The relevant facts of the instant petition have been reproduced hereunder:

- a) A sale agreement dated 3rd December, 2010 was executed between the respondent and petitioner no.2, whereby, property bearing No. 59/60, khasra no. 330/331/332, at Roshan Pura Phase-2, Najafgarh, New Delhi, (hereinafter "suit property") was sold for a total consideration of Rs. 29.5 Lakh in favour of the respondent.
- b) As per the terms of the said agreement, the respondent gave advance/bayana of Rs. 5,00,000/- to the petitioner no.2, and the remaining Rs. 24,50,000/- was to be paid within 150 days from the date of the said agreement.
- c) Thereafter, the respondent filed a civil suit bearing no. 1877/2013, seeking recovery of money on the ground that the present petitioners were allegedly trying to avoid the sale of the suit property by not handing over the papers of the same to the respondent. The said civil suit was dismissed on merits vide order dated 28th April, 2017.
- d) Subsequently, the respondent, i.e., the plaintiff before the learned Trial Court filed another suit bearing C.S. no. 820/2019, for recovery of money on similar grounds as



mentioned in the earlier suit.

- e) On 1st November, 2022, the petitioner, i.e., the defendant before the learned Trial Court filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter “CPC”), and vide order dated 16th August 2023, the learned Trial Court dismissed the same.
- f) Aggrieved by the dismissal of the application under Order VII Rule 11 of the CPC, the petitioner has preferred the present petition seeking revision of the impugned order dated 16th August 2023.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to take into consideration the entire facts and circumstances while adjudicating upon the petitioner’s application filed under Order VII Rule 11 of the CPC, seeking rejection of the respondent’s plaint.

4. It is submitted that the learned Court below erred in passing the impugned order since it failed to appreciate the fact that the suit of the respondent is filed contrary to the settled principles of law and keeping it pending for trial will cause grave injustice to the petitioners.

5. It is submitted that the suit of the respondent is barred under Order VII Rule 11 (d) of the CPC, and is thus, liable to be dismissed.

6. It is submitted that the suit of the respondent has been filed without any cause of action and the same is time barred since the earlier suit bearing



no. 1877/2013, was dismissed on merit vide order dated 28th April, 2017.

7. It is submitted that the suit of the respondent is also barred by *res-judicata*, since a civil suit surrounding the suit property has already been dismissed by the learned Trial Court, as mentioned above.

8. It is submitted that the learned Trial Court has wrongly held that the issue of limitation is a matter of trial. It is a settled legal principle that the limitation period can be condoned in an application and in appeal but not in a suit.

9. It is submitted that the respondent has mentioned in his subsequent suit that the cause of action for filing the latter suit arose on 6th September 2016, when the petitioner no. 2 refused the execution of the agreement to sell with the respondent, and denied her signature on agreement to sell during the cross examination in the earlier suit.

10. It is also submitted that the learned Trial Court erred in not appreciating the fact that the cause of action has been already arisen in the earlier suit and there cannot be fresh cause of action on the basis of the same agreement to sell.

11. It is further submitted that the petitioner no. 2 has already denied the agreement to sell and her signature in the written statement filed in the earlier suit, and in view of the same the impugned order is liable to be set aside.

12. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the impugned order dated 16th August, 2023 may be set aside.



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

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

15. 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 its 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.

16. 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 the reunder 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 but 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].”



17. 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.

18. 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.

19. 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.

20. 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.



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21. 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 further followed by the Hon'ble Supreme Court in the matter of *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 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 being not maintainable.

22. This Court is of the view that the plea of the revisionist can only be held to be maintainable where it is found that if 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.

23. 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.

24. Adverting back to the facts of the present petition.



25. In the instant case, the petitioners are aggrieved by the impugned order dated 16th August, 2023, whereby, the learned Trial Court dismissed their application under Order VII Rule 11 of the CPC, filed in suit bearing C.S. no. 820/2019. The said suit was filed by the respondent for recovery of the advance/bayana given in pursuance to the sale agreement dated 3rd December 2010, whereby, the suit property was to be sold in favour of the respondent, but the said process of sale was never concluded, and the suit property was not handed over to the respondent.

26. It has been argued by the petitioners that the respondent's suit is barred by the principle of *res judicata* and the impugned order dated 16th August, 2023 is bad in law. It has also been contended that keeping the suit pending will cause grave injustice to the petitioners since there is no cause of action and the suit filed by the respondent in the year 2018, is barred by the law of limitation.

27. At this juncture, it is apposite for this Court to analyse the impugned order dated 16th August, 2023. The relevant extracts of the same are reproduced herein:

"1. Vide this Order, I shall dispose of an application filed by the defendant under Order VII Rule 11 CPC for dismissal/rejection of the plaint on the ground that suit of the plaintiff is barred by limitation as well as by principles of res-judicata as the earlier suit vide CS no. 1877/2013 between plaintiff and defendant no. 2 on same ground has already been dismissed by Ld. ADJ /Dwarka vide order dated 28.04.2017.

2. Brief facts-necessary for the disposal of the present application are that plaintiff was in need of a house on account of his increasing need and he came to know that defendants



were keen to sale their house bearing no. 59/60, Khasra no. 330/331/332, Roshan Puri, Phase-II, Najafgarh, new Delhi measuring 100 sq. yards and the defendant no.2 was the owner of the said property and an agreement to sell dated 03.12.2010 was executed between the plaintiff and defendants which was signed by both the parties.

3. It is further averred that an advance / Bayana of Rs. 5 lacs was paid to the defendants as per agreement and it was agreed that the plaintiff shall pay the remaining amount of rs. 24,50,000/- within 150 days from the date of agreement. On 01.05.2011, the plaintiff went to the house of defendants as the funds were available with him but the defendants sought some time to execute the sale documents in favour of plaintiff.

4. It is further averred that when the plaintiff believed that the defendants are avoiding the sale, he sent a legal notice to the defendant no.2 being owner of suit property and thereafter filed a civil suit which was dismissed by the court of Ld. ADJ/Dwarka Courts vide judgement dated 28.04.2017.

5. It is further averred that on 06.09.2016, during trial of said civil suit, defendant no. 2 being the only defendant in the said suit refused execution of agreement to sell dated 03.12.2010 and after thorough inquiry, it was revealed that signature on said agreement seems to be of defendant no.1. Plaintiff avers fraud by defendants and has filed the present suit seeking recovery of earnest money of Rs. 5 lakhs paid as earnest money to the defendants.

6.Submissions heard. Record perused.

7. In my considered, the present suit is not barred by the principle of res-judicata as the earlier suit bearing No. CS/21/2014 was between plaintiff and Dhanpati Ahlawat i.e. defendant no.2 only whereas the present suit has been filed against defendant no. 1 and defendant no. 2 appears to be a proforma party. Therefore, since the earlier suit was not between the same parties, hence, the present suit is barred by principles of res-judicata.



8. As far as issue of limitation is concerned, it has been clearly averred by plaintiff that it was only during cross-examination of defendant no.2 on 06.09.2016, when she refused execution of agreement to sell, he discovered the fraud played by defendants as the signature on the said agreement appears to be that of defendant no.1. Further, the cause of action for filing the present suit against defendant no. 1 would arise when he refused to pay the amount to the plaintiff. The date of such refusal is matter of trial, which would require evidence and therefore, present suit cannot be dismissed at the outset on the ground of limitation.

9. With these observations, the application under Order VII Rule CPC for dismissal/rejection of the plaint, stands dismissed."

28. In the aforesaid impugned order, the learned Trial Court has essentially highlighted that the said suit is not barred by the principle of *res judicata*, since the earlier suit was filed between the petitioner no.2 and the respondent, however, the present suit is filed against both the petitioners, wherein, petitioner no.2 is a proforma party. The learned Trial Court held that since the suit is not between the same parties, it is not barred by the principles of *res-judicata*.

29. The learned Trial Court further held that the date of refusal to hand over the suit property is a matter of contention between the parties and the same would require the Court to consider evidence and hence, makes it a matter of trial.

30. The legal principles governing Order VII Rule 11 of the CPC are very well settled. It is a settled law that the plaint cannot be rejected in the event that the averments made therein consist of issues which are triable in nature.



The said principle has been expounded by the Hon'ble Supreme Court in a catena of cases. In the judgement passed by the Hon'ble Supreme Court, in case titled **Pawan Kumar v. Babulal**, (2019) 4 SCC 367, the following observations were made:

“13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property v. SBI Staff Assn. [Popat and Kotecha Property v. SBI Staff Assn., (2005) 7 SCC 510] : (SCC p. 515, para 10)

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

31. Similarly, in case titled **Dahiben v. Arvindbhai Kalyanji Bhanusali**, (2020) 7 SCC 366, the Hon'ble Supreme Court held as follows:



“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.”

32. By way of the aforesaid judgments, it is clear that the remedy under Order VII Rule 11 of the CPC is a special remedy, wherein, the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order VII Rule 11(a) of the CPC, is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigations, so that further judicial time is not wasted.

33. In the instant case, the learned Trial Court has categorically recorded that during the cross examination of petitioner no.2, she refused execution of the agreement to sell and it was at that time that the respondent was apprised of the fraud played by the petitioners. Moreover, it appears as though the



signature on the sale agreement dated 3rd December, 2010 is that of the petitioner no.1. Furthermore, it has been stated that the cause of action for filing the present suit would arise when the petitioners refused to refund the advance/bayana amount to the respondent. The issues highlighted by the learned Trial Court, are of such nature which would require the Court to scrutinize the documents on record and appreciate the evidence of the parties. The said issues cannot be decided merely on the basis of the averments made in the plaint.

34. 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.

35. 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.

36. 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.

37. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 16th August, 2023, passed by the learned ADJ Dwarka Court, New Delhi, in Civil Suit bearing C.S. No. 820/2019



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38. 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.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 31, 2023

Dy/ds/ryp

Click here to check corrigendum, if any