



2023:DHC:9440



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

% **Date of order :20th December, 2023**

+ **C.R.P. 388/2023, CM APPL. 66397/2023&CM APPL. 66398/2023**

**HASRAT ALI (SINCE DECEASED) THROUGH HIS LEGAL
HEIR HANIF**

..... Petitioner

Through: **Mr. M. Mohatram, Mr. S. D.
Kushwaha and Mr. I. N. Thakur,
Advocates**

versus

MOHD. RAHIL

..... Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

"a) to call for the record of Ld. Trial Court for examining the correctness, legality, propriety and validity of the impugned order dated 23.08.2023 passed by the Hon'ble Court of Ms. Neha Garg, Civil Judge-1, Central District, Tis Hazari Courts, Delhi in case titled Mohd. Rahil Vs. Hasrat Ali vide suit No.CS SCJ 1470/2019;

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KUMAR BABBAR
Signing Date: 30.12.2023
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b) set aside the impugned order dated 23.08.2023 passed by the Hon'ble Court of Ms. Neha Garg, Civil Judge-1, Central District, Tis Hazari Courts, Delhi in case titled Mohd. Rahil Vs. Hasrat Ali vide suit No.CS SCJ 1470/2019;

c) pass such other or further order(s) as this Hon'ble court may deem fit and proper in the facts and circumstances of the case in favour of the petitioners and against the respondent in the interest of justice and equity.”

2. The respondent, i.e., the plaintiff before the learned Trial Court is stated to be the owner of the property bearing third floor, property no. 6718-19, Ahata Kidara, Bara Hindu Rao, Delhi – 110006 (hereinafter “suit property”). The suit property was rented by Mr. Hasrat Ali (since deceased), i.e., the defendant before the learned Trial Court by virtue of rent agreement dated 2nd January, 2014 at a monthly rent of Rs. 4,000/- for a period of 4 months which is from 10th October, 2013 to 9th February, 2014.

3. Since, the defendant had failed to vacate the suit property, the respondent issued a legal notice dated 7th March, 2019 and accordingly filed a civil suit bearing no. CS SCJ 1470/2019, against one Mr. Hasrat Ali, seeking permanent injunction and for recovery of possession, arrears of rent and *mesne* profits. Upon expiry of Mr. Hasrat Ali on 19th December, 2021 the present petitioner being a legal heir, was impleaded as a defendant in the above said civil suit.

4. Thereafter, the present petitioner file an application under Order VII Rule 11 (d) of the CPC, seeking rejection of the plaint and the said



application was dismissed by the learned Trial Court vide the impugned order dated 23rd August, 2023. Being aggrieved by the same, the petitioner has challenged the same before this Court under its revisional jurisdiction.

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

6. It is submitted that learned Court below had failed to exercise its jurisdiction under Order VII Rule 11 of the CPC since it erred in appreciating that under clause (d) of Rule 11 of Order VII of the CPC, in the event a suit is barred by the law, the plaint thereto is liable to be rejected.

7. It is submitted that the suit is situated in the slum area and as per Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, a prior permission is required from the competent authority to institute any suit with respect to the properties notified under the Act.

8. It is submitted that the learned Court below dismissed the petitioner's application on the ground that no such notification describing the suit property under the Act was produced by the petitioner before it but it erred by not giving the petitioner an opportunity to produce the same.

9. It is submitted that after the dismissal of the petitioner's application, he had file a RTI Application and in its reply dated 11th September, 2023, it



has been stated that the suit property falls within the slum notified area under the afore stated Act.

10. It is submitted that since the suit property falls under slum area, the learned Trial Court is duty bound to take judicial notice of the same inspite of the fact that the same has not been brought to the notice of the learned Court below by either party or their counsel.

11. It is submitted that the impugned order is contrary to law and against the facts on record and the same has resulted in miscarriage of justice, causing prejudice to the petitioner, and the impugned order has been passed without application of judicial mind.

12. It is submitted that sufficient evidence has been produced before this Court which defines the status of the suit property being under slum area and since the respondent has failed to obtain permission from the competent authority, the suit filed by the petitioner is liable to be dismissed under Order VII Rule 11 (d) of the CPC.

13. Therefore, in view of the foregoing submissions, the instant petition may be allowed and the reliefs be granted as prayed for.

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

15. At this juncture, it is 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 it may interfere if the Court below has exercised its jurisdiction illegally or there is a material irregularity found in the exercise of jurisdiction by the Trial Court.

16. 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, is 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.

17. It is the case of the petitioner that the suit property is a property notified under the Slum Areas (Improvement and Clearance) Act, 1956, and in view of Section 19 of the said Act, the respondent was required to obtain preliminary permission from the competent authority under the Act to institute any suit with respect to the suit property and since the respondent has failed to obtain such permission, the civil suit pending before the learned Court below is liable to be dismissed being barred by law under Order VII Rule (d) of the CPC.



18. The learned Trial Court dismissed the petitioner's application under Order VII Rule (d) of the CPC on the ground that *firstly* the petitioner has not taken any such defence in his written statement. *Secondly* the said petitioner's application was not accompanied by any notification which shows that the suit property is situated in the slum area and that the said application appears to be a frivolous attempt on the part of the petitioner to delay the trial of the suit. In view of the said observations, the learned Trial Court dismissed the petitioner's application file under Order VII Rule 11 (d) of the CPC, vide the impugned order dated 23rd August, 2023, relevant portion of which has been reproduced as under:

"...The aforesaid application has been filed on the ground that the suit property i.e. property bearing no. 6718-19, Ahata Kidara, Bada Hindu Rao, Delhi-110006 is notified as slum area and accordingly, the present suit is barred by Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956.

Firstly, no such defence was taken by the defendant in his Written Statement. This contention that the suit property is situated in the slum area is taken for the first time at this stage. Secondly, the present application is not accompanied by any notification which shows that the suit property is situated in slum area. The present application appears to be a frivolous attempt on the part of defendant to delay the trial of the present suit. Accordingly, the application filed by defendant is dismissed with cost of Rs. 1,000/- to be paid to plaintiff..."

19. Now advertent to the relevant provisions of law. The application of the petitioner was filed under Order VII Rule 11 (d) of the CPC, claiming



that the suit of the respondent be rejected as the same is barred by 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;.....”

20. In *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, the Hon’ble Supreme Court settled the principle 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. 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.

21. In *Popat and Kotecha Property v. State Bank of India Staff Assn.*, (2005) 7 SCC 510, the Hon’ble Supreme Court, with respect to the rejection of plaint under clause (d) of Rule 11 of Order VII of the CPC, observed as under:



“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.

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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] .)

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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.

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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...”

22. Upon perusal of the afore cited judgments, it is evident that the powers of a Trial Court while adjudication upon an application for rejection of plaint is limited in the sense that only the contentions made in the plaint are germane for deciding the rejection application and if on a reading of the plaint, the case of rejection is not made out then the said application cannot be allowed.

23. In light of the above, this Court has referred to the plaint filed by the respondent before the learned Court below which is appended as Annexure P-2 herein. Upon perusal of paragraphs 1 to 11 of the plaint, it has been



observed that there is no record of the suit property being notified under the Slum Areas (Improvement and Clearance) Act, 1956.

24. In the absence of the same and in regard to the legal principles settled by the Hon'ble Supreme Court and this Court in a catena of judgments, there is no merit in the arguments advanced by the petitioner. Moreover, the grounds taken by the petitioner cannot be addressed at this stage when the suit is fixed for examination of witnesses and the said grounds can be addressed at a later stage of the trial when the parties will lead their evidence and the petitioner will have a right to address his defense arguments in accordance with the law.

25. Furthermore, it is a settled law that the object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be well founded error and it may not be appropriate for the Court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with the law.

26. It is already an admitted proposition of law that the revisional Court would only make its observations on the illegality committed by the Court below in appreciating the evidence and recording findings of fact. It is prudent to take into consideration that while correcting the errors of jurisdiction the revisional Court cannot re-appreciate or appreciate the evidence which was not even a part of the record before the Trial Court.



27. As can be seen from the impugned order, no oral or documentary evidence was recorded by the learned Trial Court with regard to the suit property being a notified area under the Slum Areas (Improvement and Clearance) Act, 1956. Since, there was no material produced on the learned Trial Court's record, therefore, it was well within its powers to dismiss the petitioner's application and in view of the same, the learned Trial Court rightly decided the petitioner application to be devoid of any merits due to the reason that no such notification as alleged by the defendant therein was produced before the learned Court below.

28. This Court is of the view that its powers are limited to the contents of the order impugned before it and it can pass its observations only with regard to the contents thereto. Delving further into the merits of the suit and defense would amount to travelling beyond the revisional powers described under Section 115 of the CPC.

29. Since, the provisions under Order VII Rule 11 of the CPC, empowers the Court to only look into the contents of the plaint, therefore, it is held that that no such case for the rejection of the plaint has been made out. 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 context of the application under Order VII Rule 11 (d) of the CPC, is to examine the averments made in the plaint.



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30. 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 23rd August, 2023.

31. Therefore, in view of the above discussion of facts and law, it is held that there is no force in the arguments advanced by the petitioner and no case has been made out to interfere with the impugned order dated 23rd August, 2023, passed by learned Civil Judge-1 (Central), Tis Hazari Court, Delhi in civil suit bearing no. CS SCJ 1470/2019.

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

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 20, 2023
A/RYP/DB

[Click here to check corrigendum, if any](#)