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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-2686-2024 (O&M)

Reserved on : 02.05.2024

Pronounced on : 06.05.2024

JATIN BHAGAT

....Petitioner

VERSUS

VANDANA BHAGAT AND OTHERS

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sonal Anand, Advocate and
Ms. Surbhi Singh, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been filed by the defendant-petitioner challenging the order dated 03.04.2024 passed by the learned Civil Judge (Junior Division), Gurugram whereby the application filed by the defendant-petitioner under Order VII Rule 11 CPC was dismissed.
2. The brief facts relevant to the present case are that the plaintiff-respondents filed a suit seeking declaration with consequential relief of permanent injunction against the defendant-petitioner. The declaration sought was that the plaintiff-respondents be declared owner of House No.26, ground floor with basement, Akashneem Marg, DLF Phase-II, Gurugram (hereinafter referred to as 'the suit property'). An application was filed by the defendant-petitioner for rejection of the plaint under Order VII Rule 11 CPC on the ground that the suit itself was barred by Section 4(1) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred

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to as the 'Benami Transactions Act' for the sake of brevity). A reply was filed to the said application. The Trial Court vide order impugned dated 03.04.2024 dismissed the said application.

3. Learned counsel for the defendant-petitioner would contend that the plea of the plaintiff-respondents is that the finances for purchase of the suit property were provided for by them, however, the suit property was registered in the name of the defendant-petitioner and that this would amount to a benami transaction and under the provisions of Section 4 of the Benami Transactions Act, the suit itself would be barred.

4. Notice of motion.

5. Mr. Bhupinder Ghai, Advocate appears and accepts notice on behalf of the caveator/plaintiff-respondents. Learned counsel would contend that whether the suit is barred by the provisions of Section 4 of the Benami Transactions Act would be a matter of evidence inasmuch as certain exceptions have been carved out under the said provision. It is further the contention that it will be a matter of evidence as to whether the provisions of the Benami Transactions Act are even applicable in the present case.

6. Heard.

7. Before advertng to the submissions made by the learned counsel for the parties, Section 4 of the Benami Transactions Act may be noticed, which is reproduced as under :

*“4. Prohibition of the right to recover property held
benami - (1) No suits, claim or action to enforce any*

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right in respect of any property held benami against the person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”

It is trite that at the stage of dealing with an application under Order VII Rule 11 CPC only the contents of the plaint are to be seen. On a meaningful reading of the plaint, it cannot be ascertained as to whether the matter would be covered under Section 4 of the Benami Transactions Act. The question whether the suit is barred under Section 4 of the Benami Transactions Act would be a matter of trial and would be considered after the evidence has been led. On a meaningful reading of the plaint it cannot be said that the suit is barred under Section 4 of the Benami Transactions Act. For a suit to be dismissed at the outset under Order VII Rule 11 CPC, the plaint has to be such that on a meaningful reading of it, it without any doubt or dispute, shows that the same is barred by any law in force.

8. The Hon'ble Supreme Court in the case of **Pawan Kumar V/s Babulal (since deceased) through LRs & Ors. [2019 (2) RCR (Civil) 744]** has held as under :

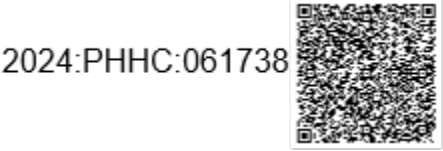
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“3. In the present case, the controversy has arisen in an application under Order 7, Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Complaint, 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 complaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property vs. State Bank of India Staff Association, 2005 (4) RCR (Civil) 334; (2005) 7 SCC 510

10. Clause (d) of Order 7, Rule 7 speaks of suit, as appears from the statement in the complaint to be barred by any law. Disputed questions cannot be



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decided at the time of considering an application filed under Order 7, Rule 11 CPC. Clause (d) of Rule 11 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.”

9. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*