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

CR No.4951 of 2024
Date of decision : 31.08.2024

M/s Shorewala Investment and Properties Ltd. ....Petitioner

Versus

Girish Kumar Jain and others ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Dinesh Trehan, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against the order dated 10th of May, 2024 passed by Civil Judge (Junior Division), Palwal whereby application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') stands dismissed.

2. Plaintiff filed suit seeking possession by way of specific performance whereby he propounded agreement to sell dated 7th of June, 2019 in his favour. It was further claimed that defendant No.1/Company i.e. M/s Shorewala & Co. Pvt. Ltd. through its director Late Sh. Subhash Chand Sherowala entered into an oral agreement to

sell with the plaintiff to sell the suit property for a total consideration of Rs.28,00,000/-. Pursuant thereto, Rs.26,25,000/- were received as earnest money and *qua* that a written receipt-cum-agreement was executed and signed by Subhash Chand Shorewala in his capacity as director of defendant No.1/company. Defendants filed written statement denying oral agreement. Defendants also moved instant application under Order VII Rule 11 CPC claiming that the suit was barred by law and thus the plaint deserves to be rejected. It was claimed that the company is a sole owner of the property in question. The company in terms of Section 46 of the Companies Act could not enter into an oral agreement. It was further claimed that cash transaction in excess of Rs.25,000/- being barred by law and the plaintiff claiming that an amount of more than Rs.26,00,000/- having been paid to him in cash, cannot maintain suit on the said pleadings under the law.

3. Trial Court dismissed the application holding that the question whether the receipt itself being in writing can mature into decree of specific performance is matter of trial which needs to be adjudicated after taking into consideration the evidence to be led by the parties.

4. Counsel for the petitioner while assailing the impugned order has drawn attention of this Court to the receipt-cum-agreement appended along with the plaint which as per him itself shows that the suit property is owned exclusively by the company. He thus submits that once from the document attached along with the plaint it is evident that the suit property is owned by the Company, oral agreement as pleaded in the plaint cannot be relied upon in terms of section 46 of the Companies Act, 1956 (hereinafter referred to as 'the 1956 Act') and thus the suit would be barred. Reliance is being placed upon law laid down by Telangana High Court in the case of **'M/s Narne Estates Pvt. Ltd., vs. M/s Gomedha Estates Pvt. Ltd.' AIR 2020 Telangana 39**. Counsel further submits that even under the provisions of the Income Tax Act the cash transaction beyond Rs.20,000/- being barred by law would have an effect on the plaint and the same cannot sustain. He further submits that along with the plaint, the plaintiff has appended documents of some other property which itself shows that the suit is misconceived.

5. I have heard counsel for the petitioner and have gone through records of the case.

6. In order to appreciate the plea raised by counsel for the petitioner, it will be apt to peruse provisions as contained under Order VII Rule 11 CPC. The same reads as under:

> "Order VII
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> **11. Rejection of plaint.**— The plaint shall be rejected in the following cases:— (a) where it does not disclose a cause of action;
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> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
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> (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
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> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> [(e) where it is not filed in duplicate;]
>
> [(f) where the plaintiff fails to comply with the provisions of rule 9:]
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> [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

7. The import of the Order VII Rule 11 CPC has been well explained by Apex Court in the case of **'Dahiben vs. Arvindbhai**

Kalyanji Bhanusali (Gajra) (D) through LRs & ors.', 2020 INSC 450 wherein after considering case law Apex Court observed as under:

> "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.
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> 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.
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> 23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)
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>> "12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the

> power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)

> "139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the

said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P) Ltd. v. Hede& Co. [Hardesh Ores (P) Ltd. v. Hede& Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941).

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557). The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds

> specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

8. The aforesaid proposition stands reiterated by Supreme Court in the case of '**Geetha, D/o Late Krishna & ors. vs. Nanjundaswamy & ors.', (2023) SCC OnLine SC 1407** laying down the test as under:

> "7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected."

9. To test the present case on the touchstone of the parameters laid down by the Supreme Court, it will be apposite to peruse the receipt propounded by the plaintiff which is part of the plaint. The same reads as under:

> "EARNEST MONEY RECEIPT
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> I, Subhash Chandra Shorewala, Authorised Representative/ Director of the above Company, have entered into the agreement to sell your Farm House No. B-8, Ansal Mugal Orchid, Village Teharaki, Police Post Dhatir, District Palwal (Haryana) with Shri Girish Kumar Jain, son of late Shri R. K. Jain, 7-A/2, Rajpur Road, Delhi 110 054 today on 07.06.2019, total value of which is Rs. 28,00,000/- and today received the amount of Rs.2625000/- in

cash. Remaining amount of Rs. 1,75,000/- will be received at the time of the registration of the Sale Deed. Its registry is recorded at Document No. 3549 dated 15.07.2005 in the name of our company. It has the area of about one acre and any kind of litigation is not pending in respect of this property and it is absolutely free from all sorts of encumbrances. I have entered into this agreement in my sound mind and health. Receipt may kindly be used at the time of requirement. It has been agreed that the registration of Sale Deed be got done prior to 31.12.2020. If Seller fails to pay the consideration, then amount of Rs.5,00,000/- shall stand forfeited or if Buyer fails to get done the registration of the Sale Deed, then Buyer can get done the registration of the Sale Deed by approaching before the Court.

For Shorewala & Co. (P) Ltd.
Sd/- illegible
Director"

10. The plea is being raised on the basis of Section 46 of the 1956 Act. Judgment passed by Telangana High Court in the case of *M/s Narne Estates Pvt. Ltd.* (supra) deals with the suit of the year 2009. 1956 Act stands repealed by the Companies Act of 2013. Section 465 of the 2013 Act specifically provides that the Companies Act, 1956 shall stand repealed subject to certain savings. No provision contained in the saving clause saves import of Section 46 of the 1956 Act. There is no corresponding provision in the 2013 Act to Section 46 of the 1956 Act. In the present suit, the defendant has propounded agreement to sell dated 7th of June, 2019 which would not be governed by the

provisions of 1956 Act but shall be governed by the provisions of 2013 Act which came into operation on 3rd of January, 2018. Thus, reliance upon Section 46 of the 1956 Act is misplaced.

11. It is not disputed that so far as Late Subhash Chand Shorewala is concerned, he was admittedly director of the company on the date the alleged receipt is stated to have been propounded. The plaintiff claims that he was authorized to sell the property. Defendant claims that he was not authorized to sell the property and that too by oral agreement. Indeed the issue w.r.t. authorization in the hands of Subhash Chand Shorewala to dispose off the property, cannot be adjudicated at a preliminary stage and thus the suit cannot be said to be barred under law at this nascent stage.

12. Coming on to the second limb of argument raised by counsel for the petitioner w.r.t. cash transaction being barred under the Income Tax Act is concerned, the consequence of violation of the provisions as contained under the Income Tax Act has been provided under the Income Tax itself. The same may entail an offence under the IT Act, but definitely cannot have a bearing to annul the transaction. So far as the plea w.r.t. appending documents of some other land to the

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plaint is concerned, the same is beyond the scope of Order VII Rule 11 CPC.

12. As a sequel of the discussion held hereinabove, this Court finds that there is no illegality or material irregularity committed by the Courts below in rejecting the application filed by the defendant/petitioner under Order VII Rule 11 CPC seeking rejection of the plaint that can persuade this Court to exercise revisional jurisdiction. Consequently, the instant revision petition is ordered to be dismissed.

August 31, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes