



\$~A-6

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

+ C.R.P. 189/2024, CM APPL. 36159/2024 & CM APPL. 36160/2024

DR UTKARSH PATHAK

..... Petitioner

Through: Mr. Harsimran Singh Duggal,  
Advocate.

versus

DR VAISAKH SANAL

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

%

**02.07.2024**

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

*“a. Pass an order calling for records of C.S. (DJ) No. 1056 of 2022 pending on the file of learned District Judge-07, Central District, Tis Hazari Courts;*

*b. Pass an order setting aside the Order dated 09.05.2024 passed by the Learned District Judge-07, Central District, Tis Hazari Courts dismissing the Petitioner's Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and appointing a Local Commissioner for recording of Evidence;*

*c. Pass an order setting aside the Separate Order dated 09.05.2024 passed by the Learned District Judge-07, Central District, Tis Hazari Courts in C.S. (DJ) No. 1056 of 2022 fixing the terms of appointment of the Local Commissioner for recording of evidence of the parties.*

*d. Pass an order allowing the Petitioner's Application Under Order VII Rule 11, CPC, 1908;*



*e. Pass any further orders as this Hon'ble Court may deem fit."*

2. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court has not taken into consideration the averments made in the application filed under Order VII Rule 11 of CPC as well as the submissions made by the learned counsel for the applicant/petitioner.

3. It is further submitted that while adjudicating upon the application filed under Order VII Rule 11 of CPC, the learned Trial Court has to take into consideration only the contents made in the plaint as well as the documents filed along with the plaint and the contentions made in the written statement shall not be taken into account. In the instant petition, upon plain reading of the plaint, it is evident that there is no cause of action in the said plaint.

4. It is contended that the impugned order was passed by the learned Trial Court without considering the aforesaid submissions made by the petitioner, therefore, the impugned order is contrary to the scope of the provisions of Order VII Rule 11 of the CPC as well as several legal pronouncements of this Court as well as the Hon'ble Supreme Court.

5. In view of the aforesaid submissions, the learned counsel appearing on behalf of the petitioner prayed that the impugned order dated 9<sup>th</sup> May, 2024 may be set aside and the instant revision petition may be allowed.

6. Heard the learned counsel appearing on behalf of the petitioner, perused the contents made in the application as well the reasons given by the concerned Court while passing the impugned order.

7. Before advertng to the merits of the case, this Court shall reiterate the settled position of law regarding Order VII Rule 11 of the CPC. It is a settled law that in an application filed under Order VII Rule 11(d) of the



CPC, the relevant facts which need to be looked into for adjudicating upon an application, there shall be a cause of action disclosed in the plaint. Order VII Rule 11 (d) of the CPC is a remedy available to the defendant to challenge the maintainability of the suit itself, irrespective of the defendant's right to contest the suit on merits.

8. The expression 'cause of action' as stipulated in Order VII Rule 11 (d) of the CPC, pertains to existence of the cause of action in the pleadings. The Hon'ble Supreme Court in the judgment of ***T. Arivandandam v. T.V. Satyapal***, (1977) 4 SCC 467, held that if the Court is of the view that after meticulous reading of the plaint, there was no cause of action disclosed in the plaint, then the said plaint shall be rejected.

7. At this juncture, for proper adjudication of the impugned order, this Court deems it is necessary to reiterate findings given by the learned Trial Court of the impugned order *whilst* adjudicating upon the application under Order VII rule 11 of the CPC. The relevant paragraphs read as under:-

*"3. In the application, it is stated that the allegations are false and no specific name of witness and date of incident has been mentioned in the plaint. It is a settled position of law that while deciding the application under Order 7 Rule 11 CPC, only the plaint is required to be seen and not the WS/defence of the defendant. From the perusal of the suit, this court is of the considered opinion that the plaint discloses sufficient cause of action to proceed further and the disputed allegations are matter of evidence on trial. Accordingly, the said application is dismissed.*

*4. At this stage, a request is made by the counsel for plaintiff for appointment of local commissioner for recording of the evidence. Even this court is heavily overburdened with large number of cases and priorities are required to be given to the most old cases (which range from 20-30 years old). As per*



*Order 18 Rule 4 CPC, a local commission can be appointed by this court and for that purpose even consent of the parties are not required. As such, vide my separate order, a LC is appointed for recording evidence of both sides.”*

8. The learned Trial Court held that upon perusal of the contents of the plaint, it is of the opinion that the plaint discloses cause of action and involves a disputed question of fact and law which merits trial into the matter.

9. Now this Court will advert to relevant paragraphs of the plaint which discloses cause of action and the same has been reproduced herein below:

*“4. It is respectfully submitted that the Plaintiff has preferred the present Civil Suit for the cause of Tortuous Acts of Nuisance due to obnoxious conduct of the Defendant who has been threatening the Plaintiff with his continuous obnoxious acts of physical and mental violence resulting in distress resulting in irreparable injury I damage. It is submitted that the present Civil Suit is preferred under the aegis of Section 38 and Section 39 of the Specific Relief Act, 1963 read with Section 40 of the Specific Relief Act, 1963 for seeing injunction and damages citing infringement of the Right to Dignity of the Plaintiff by the virtue of the tortuous conduct of the Defendant by causing mental harassment and tarnishing the reputation of the Plaintiff amongst the peers at the place of work i.e., Maulana Azad Medical College, 2 Bahadur Shah Zafar Marg, New Delhi 110002.”*

8. Upon perusal of the aforementioned paragraph of the plaint, it can be inferred that the civil suit has been filed by the respondent under Section 38 and Section 39 of the Specific Relief Act, 1963 read with Section 40 of the Specific Relief Act, 1963 seeking injunction and damages for violation of the respondent's right to dignity due to alleged tortuous conduct of the



petitioner at the respondent's workplace.

9. This Court is of the view that upon meticulous evaluation of the contents of the plaint, it can be inferred that the plaint discloses the cause of action i.e., tortuous conduct of the petitioner and the respondent is seeking relief against the same in his plaint. It is further held that the learned Trial Court has to adjudicate upon the issue whether the petitioner committed such act as alleged by the respondent and for adjudicating upon the same, trial needs to be conducted.

10. In light of the above, this Court is of the view that while adjudicating the petitioners' application filed under Order VII Rule 11 of the CPC, the learned Trial Court rightly decided the same in consonance with the law laid down by the Hon'ble Supreme Court.

11. This Court does not find any force in the propositions put forth by the petitioner and is of the view that the petitioner have failed to make out his case to seek the intervention of this Court under its revisional jurisdiction.

12. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 9<sup>th</sup> May 2024, passed by the learned DJ-07, Central District, Tis Hazari Courts, Delhi, in Civil Suit bearing no. CS DJ 1056/2022.

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

**CHANDRA DHARI SINGH, J**

**JULY 2, 2024**

rk/db

*Click here to check corrigendum, if any*