



2024:DHC:5939



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

% **Date of order: 16th July, 2024**

+ C.R.P. 193/2024 & CM APPL. 36939/2024 & CM APPL.
36940/2024

LAVA KISHORE MALHOTRAPetitioner

Through: Mr. S.S. Panwar, Ms. Nivedita
Panwar, Mr. Ravi Panwar and Mr.
Punam Singh, Advocates

versus

NIVEDITA VERMANI & ORS.Respondents

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates for DDA
Mr. Puneet Yadav, Advocate for
MCD

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter “Code”) has been filed on behalf of the petitioner seeking setting aside of the impugned order dated 29th May, 2024 passed by the learned ADJ-04 (South), Saket Courts, New Delhi in civil suit (DJ) bearing No. 295/2023.

2. The brief facts which have led to the filing of the instant revision petition are as follows:

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KUMAR BABBAR
Signing Date: 14.08.2024
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- a. Petitioner is the owner and resident of Flat No. 265, Ground Floor, RPS DDA Flats, Sheik Sarai, Phase -1, New Delhi since 25th June, 1999. The aforementioned flat was purchased by the petitioner *vide* registered sale deed dated 25th June, 1999. The respondent is a resident of Flat No. 266 (duplex) First and Second Floors, RPS DDA Flats, Sheikh Sarai, Phase-1, Delhi which was purchased *vide* registered sale deed dated 31st May, 2003.
- b. In 2019, Sh. Sandeep Vermani/husband of the respondent no. 1, raised illegal and unauthorised construction of third floor above roof top as well as made alterations in first and second floor of aforementioned Flat No. 266. Subsequently, the petitioner filed a civil suit on 31st January, 2019 bearing case no. CS (SCJ) No. 116/2019 seeking mandatory injunction and damages which is pending disposal before the, SCJ, South, Saket Courts, New Delhi.
- c. During the course of proceedings before the learned Trial Court, husband of the respondent no. 1 gave an undertaking on 25th October, 2019 that he would remove the unauthorized constructions; however, he failed to do so.
- d. On 5th October, 2010, a show cause notice was issued by the MCD against husband of the respondent no. 1 wherein he was directed to explain why proceeding should not be initiated against him for violating his undertaking. However, no reply was filed as a response to the aforementioned show cause notice.



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- e. On 29th January, 2020, the respondent no.1 filed an application under Order 1 Rule 10 of the Code to implead herself as a party in CS (SCJ) no. 116/ 2019 and she was impleaded as a party *vide* order dated 19th March, 2021 in the aforementioned suit.
- f. Thereafter, a civil suit bearing no. 295/2019 was filed by respondent no. 1 against the petitioner herein alleging illegal and unauthorized constructions on the property in question. Subsequently, the petitioner moved an application under Order VII Rule 11 of the Code before the learned Trial Court on 6th November, 2023 for dismissal of suit in civil suit bearing no. 295/2019. The learned Trial Court dismissed the same *vide* order dated 29th May, 2024 ('impugned order' hereinafter).
- g. Thereafter, respondent no. 1 filed a Civil Suit No. 295/2023 which was adjudicated upon by District Judge 04, South District, Saket Courts, New Delhi and subsequently dismissed.
- h. Aggrieved by the aforementioned order of the learned Trial Court, the instant civil revision petition has been filed seeking setting aside of the same.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to consider that the pleadings do not constitute a cause of action. It is further submitted that the learned Trial Court failed to appreciate the facts and circumstances of the case and passed the impugned order without relying on the facts and circumstances of the case.



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4. It is submitted that the learned Trial Court passed the impugned order based on findings and observations which are based on extraneous considerations, and not recognised by law. It is further submitted that the instant facts are fit to invoke the revisional jurisdiction of this Court under Section 115 of the Code.

5. It is submitted that this Court must interfere with the impugned order as the said interference would be in line with the position taken by the Hon'ble Supreme Court in the cases of ***Rajendra Bajoria v. Hemant Kumar Jalan***, (2022) 12 SCC 641, ***Ramisetty Venkatanna & Anr. Vs. Nasyam Jamai Saheb & Ors***, decided on 28th April, 2029 in ***Civil Appeal No. 2717/2023*** and ***T. Muralidhar Vs. PVR Murthy***, decided on 7th November, 2014 in ***RFA (OS) No. 115/2014*** wherein it was held that under Order VII Rule 11 of the Code, it is the duty of the Court to assess whether the plaint discloses a cause of action by examining the averments in the plaint along with the documents relied upon, and to determine whether the suit is barred by any law.

6. It is submitted that the learned Trial Court failed to appreciate that the pleadings filed by the plaintiff must contain a statement of material facts as the same is a mandatory condition under Order VI Rule 2 of the Code.

7. It is submitted that the pleadings in the present suit do not specify the material facts as to which date, month or year, the alleged unauthorized constructions and addition/alteration had taken place in the suit property to constitute a cause of action. It is further submitted that the alleged cause of action is totally vague, imaginary and concocted.



8. It is submitted that the learned Trial Court failed to appreciate that the photographs and complaint dated 6th December, 2021 do not show any fresh construction that was going on the area in question. It is further submitted that the abovementioned complaint does not specify where the unauthorized construction would have taken place or why the complaint was not raised when the construction was being undertaken.

9. It is submitted that the status report dated 30th August, 2022 filed by the Municipal Corporation of Delhi supports the claim of the petitioner and the learned Trial Court has discarded important facts, factors and legal propositions in passing the impugned order.

10. Hence, in view of the foregoing discussions, it is prayed that the impugned order passed by the learned Trial Court may be set aside.

11. *Per contra*, learned counsel for the respondent submitted that the impugned order is valid in law and has been passed after considering the facts and circumstances of the case.

12. It is submitted that there exists a valid cause of action with regard to the illegal alterations made in the aforementioned flat and no illegality has been committed the adjudication of the application by the learned Trial Court.

13. It is submitted that the impugned order passed by the learned Trial Court appropriately considers that a claim against unauthorized construction is a cause of action under law. It is further submitted that the learned Trial Court determined that the right of property owners and other aggrieved



parties to seek redressal against illegal and unauthorized construction constitutes of a cause of action.

14. Learned counsel appearing on behalf of the Delhi Development Authority submitted that the complaint filed against illegal and unauthorized construction by Shri L.K Malhotra r/o Flat No. 265, Ground Floor, RPS DDA Flats, Sheikh Sarai, Phase 1, New Delhi (petitioner herein) has been placed on the record as per which illegal and unauthorized constructions were made on the property of the petitioner.

15. Learned counsel appearing on behalf of the Municipal Corporation of Delhi (hereinafter “MCD”) submitted that the MCD had inspected the property and based on its findings, issued a show cause notice to the respondent who refuted the charge of unauthorized construction *vide* reply dated 27th February, 2023.

16. It is submitted that the MCD had filed a status report dated 30th August, 2022 which has been placed on record. It is further submitted that as per the aforementioned report, it was found that neither any constructions are going on nor any building material has been found stacked at the site.

17. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

18. Heard the learned counsel for the parties and perused the records.

19. It is the case of the petitioner that the learned Trial Court erroneously passed the impugned order without considering whether the cause of action arose or not. It is contended that the learned Trial Court has not considered the particulars of raising the unauthorized construction and without said



specification, the suit is not maintainable and therefore, the learned Trial Court has committed a patent error in law and is not justified in passing the impugned order which dismissed the application under Order VII Rule 11 of the Code.

20. In rival submissions, that the abovesaid contentions have been rebutted by stating that the impugned order is valid in law and has been passed keeping in mind the facts and circumstances of the case. It is contended that there exists a cause of action with regard to the illegal alterations made in the property of the petitioner.

21. At this stage, it is apposite to peruse the impugned order passed by the learned Trial Court. The relevant paragraphs of the same are reproduced below:

“10. Perusal of the plaint shows that the suit is filed for Permanent Mandatory Injunction & Damages. The main ground taken by the plaintiff is that defendant no. 1 has carried out illegal and unauthorized construction on the ground floor (i) by removing some load-bearing beams, walls, and pillars, (ii) that the illegal alteration and shifting of those beams, pillars, and walls may create an additional burden on the other walls which are not constructed to handle the heavy weight of the building, (iii) defendant no. 1 has also carried out illegal and unauthorized construction of a room at the backside/courtyard and the same is illegal, (iv) the room at the courtyard gives illegal easy access to the first floor of the plaintiff.

11. In the opinion of this court, the plaint shows a sufficient cause of action. Challenging any illegal alteration that affects the structural integrity of the building is a good enough cause of action. The further point of legalization and regularization of



the alleged illegal extension alteration is to be proved by the defendant during the trial. In the considered opinion of this court, the plaintiff has shown a sufficient cause of action in the plaint, therefore, the application under Order VII Rule 11 CPC does not deserve to be entertained. Application is accordingly, dismissed.”

22. Upon perusal of the aforementioned extracts, it is clear that upon reviewing the plaint, the learned Trial Court determined that the suit filed for permanent mandatory injunction and damages constitutes a sufficient preliminary cause of action. It was observed by the learned Trial Court that the plaintiff herein contended that defendant no. 1(husband of the respondent herein) has carried out unauthorized and illegal construction activities. The illegal alterations include the removal and shifting of load-bearing beams, walls, and pillars, which may overburden other walls not designed to support the building's weight. Additionally, defendant no. 1 (husband of respondent herein) has unlawfully constructed a room in the backyard, providing unauthorized access to the plaintiff's first floor.

23. It is further made out that the learned Trial Court recognized that the challenge of these alterations is a sufficient cause of action. It observed that the issue of legalization and regularization of the alleged illegal constructions must be addressed during the stage of the trial. Consequently, the learned Trial Court concluded that the plaintiff's application under Order VII Rule 11 of the Code cannot be allowed.

24. The learned Trial Court took note that any illegal alteration that affects the structural integrity of the building is a sufficient cause of action.



Further, it held that legalization and regularization of the alleged illegal extension alteration are a matter that must be proved during the trial.

25. Before delving into the merits of the instant revision petition, it is imperative to discuss the scope of revision under Section 115 of the Code. It is well settled that scope of revision is limited and it was enacted with a view to enable the courts to correct certain errors of jurisdiction committed by the subordinate courts. It is evident that the High Court may only intervene in the decisions of the subordinate court if there has been an illegality or significant irregularity in the exercise of its jurisdiction. Under its revisional powers, the High Court cannot adjudicate upon the factual findings of the subordinate Court; rather, it can only interfere if there are issues with the Court's jurisdiction.

26. The issue in the instant case is with regard to the alleged erroneous adjudication of the application filed under Order VII Rule 11 of the Code, therefore, it is imperative to briefly state the settled position of law with respect to the same.

27. In the case of *Eldeco Housing & Industries Ltd. v. Ashok Vidyarthi*, **2023 SCC OnLine SC 1612**, the Hon'ble Supreme Court held that in case, the parties approach the Court under Order VII Rule 11 of the Code, the Court is not entitled to consider any evidence or enter into a disputed question of fact or law, rather it has to decide the application only on the basis of the averments made in the plaint. The relevant portion of the said judgment is reproduced below:



“17. In Kamala v. K. T. Eshwara Sa, this Court opined that for invoking clause (d) of Order VII Rule 11 CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a



preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

28. In the case of ***Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614***, the Hon’ble Supreme Court held that 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. The relevant paragraph has been reproduced herein:

“25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr Nariman did not dispute that “law” within the meaning of clause (d) of Order 7 Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action 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 whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to



find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [(2004) 9 SCC 512] and Popat and Kotecha Property v. State Bank of India Staff Assn. [(2005) 7 SCC 510]”

29. Therefore, in view of the above discussion, it is evident that the scope of intervention in an application under Order VII Rule 11 of the Code is limited.

30. In light of the facts of the instant case, this Court is of the view that it is imperative to determine whether a cause of action arose in the plaint or not.

31. This Court has perused the impugned order as well as the averments made in the plaint. The relevant paragraphs of the impugned order have been reproduced as under:

“ 11. That the illegal alteration and shifting of those beams, pillars, was may create additional burden on the other walls which are not constructed as much to handle the heavy weight and lift of the building. The said illegal alteration and extension carried out by the defendant No. 1 may dismanue the strong foundation of the entire building which is dangerous and against the safety of the ptaintiff and other residence in the building.



12. That the defendant no. 1 has also carried out illegal and unauthorized construction of a room at the backside/courtyard and the same is illegal and unauthorized as per the approved plan of the defendant no. 2. It is pertinent to mention here that defendant No. 1 had accrued out the said illegal and unauthorized construction without any permission from the plaintiff and other statutory bodies regulating the building plans.

22. That the plaintiff has requested the defendant No. 1 to uninstall/remove the geyser illegally and unauthorizedly installed by defendant No. 1 from the common shaft as it is an eminent danger to the plaintiff and others who share the common shaft in the building but the defendant No. 1 has never paid any heed to the request made by the plaintiff. The said geyser is still installed in the common shaft which is emitting dangerous fumes every day.

29. That all request of the plaintiff was turned down by the defendants, hence no option left to the plaintiff except to only knock the door of justice.

30. That the cause of action arose when the defendant No. 1 has converted the illegally and unauthorizedly converted entire garage area into room by removing load bearing walls, pillars, beam etc, and has weakened the structure of the building. The cause of action further arose when the defendant No. 1 made illegal construction at the back side of the Flat. The cause of action further arose when the perpetrator climbs up the illegal and unauthorized structure to have an illegal access of the first floor i.e, the property of the plaintiff. The cause of action further arose when the plaintiff informed the defendant No. 1 about the illegal structure and defendant ignored the request of the plaintiff to remove the illegal and unauthorized structure constructed by defendant No. 1. The cause of action further arose when the plaintiff requested the defendant No. 1 to remove the old geyser from the common shaft and defendant No. 1 failed to remove it. The cause of action further arose on



06.12.2021 when the plaintiff made a written complaint dated 06.12.2021 to the defendant No. 2 & 3, inter-alia for demolition of the illegal and unauthorized structure constructed by the defendant No. 1 but no action has been taken till date. The cause of action is still continuing and subsisting as the defendant No. 1 has not removed/demolished the illegal and unauthorized structure.”

32. Upon perusal of the aforementioned paragraphs, this Court is of view that a sufficient cause of action arose at multiple instances. In paragraph no. 11 of the plaint, it is stated that illegal alterations were made by defendant no.1/petitioner herein with regard to shifting of the beams additional burden on the other walls which were not constructed to handle the heavy weight of the building.

33. As per paragraph no. 12, it is contended that there were illegal constructions made for a room which and the said construction is against the approved plan of the building. Moreover, in paragraph 22, it is stated that the plaintiff/ respondent no.1 herein had requested to uninstall and remove the geyser which was illegally installed by the defendant no.1/petitioner.

34. In paragraph no. 30, multiple instances of arisal of cause of action have been stated. It is stated that the cause of action first arose when there was an illegal conversion of the garage into a room. Subsequently, cause of action arose when there was illegal construction which was carried out in the backside of the flat in question. It is further stated that the defendant no.1 ignored the request of the plaintiff and installed the replacement of the old geyser without any consent or permission.



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35. Thus, it is apparent from the bare reading of the plaint that there exist a cause of action in light of the alterations made to the aforementioned flat and the same is pleaded by the plaintiff/respondent no.1 herein in the plaint. Since arisal of cause of action has been made out on a plain reading of the plaint, this Court cannot interfere with the impugned order as there is no illegality in the findings of the learned Trial Court.

36. In view of the above discussions on facts and law, this Court does not find any reason to interfere in the impugned order dated 29th May, 2024 passed by the learned Court of ADJ-04 (South), Saket Courts, New Delhi in civil suit (DJ) bearing No. 295/2023 and the same is hereby upheld.

37. Accordingly, the instant petition stands dismissed along with pending applications, if any, also stands dismissed.

38. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 16, 2024
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Click here to check corrigendum, if any

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