



2024:DHC:5230



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

% **Date of order: 8th July, 2024**

+ **C.R.P. 197/2024 & CM APPL Nos. 37327-28/2024**

DR UTKARSH PATHAKPetitioner

Through: **Mr. Harsimran Singh, Advocate.**

versus

DR SREENIVAS MADIREDDYRespondent

Through: **Mr. Abhijit Mishra, Advocate**
(Through VC)

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 ('CPC' hereinafter) has been filed praying for the following reliefs:-

“a. Pass an order calling for records of C.S. (DJ) No. 84 of 2023 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;

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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. 84 of 2023 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 while passing the impugned order dated 9th May, 2024, the learned Trial Court did not take into consideration the submissions made by learned counsel appearing on behalf of the revisionist/defendant and also failed to appreciate the contents made in the plaint.

3. It is submitted that the plaint does not disclose any cause of action for making a defamatory remarks against the respondent. It is also submitted that the Inquiry Committee has been constituted by the competent authority and the Committee has gone through the contents of the alleged defamatory remarks as well as the other evidence on record and after that reached on the conclusion that there are no defamatory remarks made by the revisionist against the respondent.

4. It is submitted that another suit of similar nature as that of the suit has also been filed by the respondent before the learned ADJ vide C.S. (DJ) 85 of 2023 and that suit also the revisionist/defendant has filed an application under Order VII Rule 11 of the CPC for rejection of the said suit. Learned counsel further submitted that another suit is filed against



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the other person alleging therein that the said person has made remarks of similar nature to the respondent in that suit and the said Order VII Rule 11 application was allowed by the concerned ADJ *vide* order dated 9th August, 2023.

5. It is also submitted that the revisionist had apprised the learned Trial Court about the rejection of the similar suit, however the learned Court below did not take the same into consideration while deciding the application under Order VII Rule 11 filed by the revisionist herein.

6. He has also referred paragraph nos. 8 and 9 of the plaint and submitted that the said paragraphs do not disclose any cause of action for initiation of further evidence in the said suit, therefore, no case was made out for continuance of the suit filed by the respondent herein.

7. Learned counsel appearing on behalf of the revisionist therefore submitted that the present petition be allowed and reliefs be granted as prayed for.

8. *Per contra*, learned counsel appearing on behalf of the respondent/plaintiff appearing on advance notice vehemently opposed the present petition submitting to the effect that there is no illegality or error in the impugned order dated 9th May, 2024 passed by the learned Trial Court while deciding the application filed for dismissal of the suit. He has referred to paragraph nos. 3 and 4 of the impugned order and submitted that disclosure of the cause of action of defamatory remarks by the revisionist herein against the contents made in the plaint were properly considered by the court concerned while deciding the application and



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therefore, no case is made out against the respondent.

9. It is also submitted that there is very limited scope of interference while adjudicating an application filed under the Order VII Rule 11 of CPC and the present petition, being devoid of any merit may be dismissed.

10. Heard the learned counsel for the parties.

11. By way of the instant petition, the revisionist has challenged the impugned order, the relevant portion of which reads as under:-

“2. The present suit has been filed for recovery of damages on the basis of some defamatory statement, allegedly made against the plaintiff by the defendant. Both the parties are doctors by profession and the said incident referred to their avocation. An effort has been made for settlement but the matter could not be settled.

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 29 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



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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.

5. Mobile numbers of both the counsels are taken on record and the Local Commissioner will coordinate with them in this regard. Copy of the order be given dasti to the LC alongwith memo of the parties today itself. PF be filed for summoning of witnesses/record, if any, in the meantime after indicating the date given by the LC.”

12. This Court has perused the impugned order dated 9th May, 2024 and also perused the reasoning given by the learned Trial Court in paragraph nos. 3 and 4 of the impugned order as well as the contends made in the application.

13. A plain reading of the contents made in the plaint clearly disclose the cause of action stated in the defamatory suit and in paragraph 3 of the impugned order clarifies that the learned Trial Court has taken into account the factum that the contents made in the plaint are disclosing the cause of action against the revisionist herein.

14. The paragraph no. 3 of the impugned order clarifies that the objections made in the application are related to the evidence and the same can only be examined at the stage of trial and therefore, the contents of the plaint do disclose the cause of action.

15. The Hon’ble Supreme Court and this Court has reiterated the settled position time and again and it is well settled that in order to adjudicate the



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application filed under Order VII Rule 11 CPC, the Courts are only required to peruse the averments made in the plaint and nothing else.

16. In ***Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.***, **2022 8 SCC 633**, the Hon'ble Supreme Court reiterated the said position and held as under:

“34. Before proceeding further, it would be useful to refer to the following judgments of this Court in respect with Order 7 Rule 11 CPC:

34.1. In T. Arivandandam v. T.V. Satyapal, this Court observed, in the following words, that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory: (SCC p. 470, para5)

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the



earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

It is dangerous to be too good”””

34.2. In Arhar Hussain v. Rajiv Gandhi, this Court discussed the very purpose of the power conferred under Order 7 Rule 11 CPC by observing thus (SCC p. 324, para 12)

“12. The whole purpose of conferment of such power 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”

34.3. In Sopan Sukhdeo Sable v. Charity Commr., it was held that Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate any stage when the objections can be raised, and also does not say in express terms about the Filing of a written statement. It was held that the word “shall” is used to clearly imply that a duty is cast on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. Elaborating on the aspect of cause of action by quoting I.T.C. Ltd. V. Debts



Recovery Appellate Tribunal, 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.

34.4. This Court in Liverpool & London S.P. & I Assn. Ltd. V. M.V. Sea Success held that a plaint must be construed as it stands without any amendments. The same is extracted herein as follows: (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 its entirety, a decree would be passed.”

34.5. We could allude to the exposition of this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalals, wherein it was held as under: (SCC p. 179, para 7)

“7.... The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the



allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised, if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

34.6. In Dahiben v. Arvindbhai Kalyanji Bhanusali, Indu Malhotra, J., while dealing with an appeal against an order allowing rejection of a suit at the threshold, had an occasion to consider various precedents discussing the intent and purpose of Order 7 Rule 11 CPC while setting out principles in relation to the same. It was held that the provision of Order 7 Rule 11 is mandatory in nature and that the plaint "shall" be rejected if any of the grounds specified in clauses (o) to (e) is 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. The relevant portion of the judgment is extracted as below: (SCC pp. 377-78, para 23)

"23.2. The remedy under Order 7 Rule 11 CPC is an independent and special remedy wherein the court is empowered to summarily dismiss a suit at the threshold, without proceedings 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.



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.*

23.4. *In Azhar Hussain v. Rajiv Gandhi, 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.....*

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 scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.7. x x x xxx xxx xxx

23.8. *Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(0). When a*



document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

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.”

17. Upon perusal of the aforesaid extracts of the judgment, it is crystal clear that the Courts are duty bound to adhere to the mandate of the provision where only the plaint is required to be perused for determining the question of dismissal of the plaint. It was also held that the Court cannot determine the question of rejection of plaint by referring to any other document.

18. Therefore, the order in the other suit cannot be relied upon while deciding the Order VII Rule 11 application in the other suit initiated against the other parties.

19. In view of the above facts and circumstances as well as the law settled by the Hon'ble Supreme Court, I do not find any merit or illegality or error in the impugned order. Therefore, the impugned order dated 9th May, 2024 passed by the Learned District Judge-07, Central District, Tis Hazari Courts



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in C.S. (DJ) No. 84 of 2023 is hereby upheld.

20. Accordingly, the instant revision petition stands dismissed alongwith the pending applications, if any.

JULY 8, 2024
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CHANDRA DHARI SINGH, J

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