



2024:DHC:5912



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 26th July, 2024**
+ C.R.P. 202/2024 & CM APPL. 37782/2024 (*Stay*)
RADHA GARG @RADHA GOYALPetitioner
Through: Mr. Trilok Nath Saxena, Mr. K.K
Bhati, Mr. Aakash Shankar and Ms.
Shalu Bhati, Advocates.
versus
GAURAV GOYALRespondent
Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 37783/2024 (*Exemption*).

Exemption allowed subject to just exceptions.

The application stands disposed of.

CM APPL. 37784/2024 (*Condonation of delay*).

This is an application under Section 5 of Limitation Act, 1963 read with Section 151 Code of Civil Procedure, 1908 for condonation of delay in filing the instant appeal.

For the reason stated in the application, the delay of 6 days in filing the appeal is condoned.

Accordingly, the instant application is disposed of.



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C.R.P. 202/2024 & CM APPL. 37782/2024 (Stay)

1. The present revision petition has been filed by the revisionist under Section 115 of the Code of Civil Procedure, 1908 ('CPC' hereinafter) seeking the following reliefs:

- a) *"Call the trial court record of the above said case.*
- b) *To allow the present Civil Revision Petition while setting aside the impugned order dated 15.01.2024 passed in the application Under Order 7 Rule 11 read with Section 151 CPC and Under Section 8 of the Suit Valuation Act, 1887 filed on 29.04.2023, in the Civil Suit No.7519/2016.*
- c) *Any other relief(s) which this Hon'ble Court deems fit just and proper and arising out of the proceedings filed by the Revisionist may also be passed in its favour and against the respondents."*

2. The respondent/plaintiff filed a suit for specific performance before the learned ADJ-07, Saket Courts, Delhi ('learned Trial Court' hereinafter) in respect of the property bearing no. 1682, gali no. 2, Govindpuri Extension, Kalkaji, New Delhi and prayed for a money decree for a sum of Rs. 13,38/600/-.

3. During the pendency of the suit, the plaintiff/defendant moved an application under Order VII Rule 11 of the CPC for dismissal of the plaint on grounds of non-mentioning of the current value of the suit property as well as on the issue of territorial jurisdiction.

4. Pursuant to completion of the proceedings, the learned Trial Court passed the order dated 15th January, 2024 ('impugned order' hereinafter) thereby rejecting the application filed by the petitioner.



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5. Aggrieved by the same, the petitioner has approached this Court by filing the instant revision petition seeking setting aside of the impugned order dated 15th January, 2024.

6. Learned counsel appearing on behalf of the petitioner submitted that the learned Court below erred in dismissing the application without considering its previous order dated 27th May, 2015, whereby, while adjudicating the application filed for grant of the interim injunction, the learned Court below observed that there is no *prima facie* case in favor of the respondent herein.

7. It is submitted that the learned Court below erroneously held that the suit for specific performance is maintainable despite the absence of any written agreement between the parties.

8. It is submitted that the learned Trial Court erred in holding that the suit is maintainable and failed to appreciate that the suit was filed after expiry of three years which is beyond the statutory limitation period and thus liable to be rejected under Order VII Rule 11 of the CPC.

9. It is submitted that the learned Trial Court erred in holding that the alternative relief sought by the respondent i.e., the recovery of cheque amount Rs. 9,20,000/- paid as consideration amount is maintainable as an alternate remedy cannot be sought by the respondent.

10. It is submitted that the cheque for the abovesaid amount was issued on 28th March, 2011, but the suit pending before the learned Trial Court was filed by the respondents in 2014, i.e. after a lapse of three years, therefore, the same being time barred ought to be dismissed.



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11. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition may be allowed and reliefs be granted as prayed.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent/plaintiff vehemently opposed the instant petition submitting to the effect that the learned Court below rightly adjudicated the issue and the application filed under Order VII Rule 11 of the CPC, being devoid of any merits, was rightly dismissed.

13. It is submitted that a bare perusal of the plaint proves the cause of action and a strong case for specific performance of the agreement and therefore, the learned Court below rightly rejected the application filed by the petitioner.

14. It is submitted that the scope of dismissal of the plaint under Order VII Rule 11 of the CPC is narrow and the Courts are required to look into the contents of the plaint only, and since the plaint filed by the respondent clearly depicts the cause of action, no such grounds exist arise for dismissal of the plaint at this stage.

15. In view of the foregoing submissions, the learned counsel appearing on behalf of the respondent submitted that the instant petition being devoid of any merit may be dismissed.

16. Heard the learned counsel for the parties and perused the record.

17. The petitioner has approached this Court for setting aside the impugned order on grounds that the plaint filed by the respondent/plaintiff does not disclose the cause of action and therefore, the same needs to be



dismissed at the outset. Apart from the above said ground, the petitioner has also contended that the court fee paid by the plaintiff has been wrongly determined and therefore, the learned Court below erred in appreciating the said factum for dismissal of the plaint, and that the learned Trial Court failed to appreciate that the suit was filed after the expiry of the statutory limitation period.

18. Therefore, the limited question for adjudication before this Court is whether the impugned order can be set aside on the aforesaid grounds or not.

The relevant extracts of the impugned order reads as under:

15. In a suit for specific performance cause of action consists of two parts that must be alleged in plaint first the existence of an agreement between the parties and second, the defendant committed a breach of agreement or promise.

16. In order to understand when cause of action arose, reference to context and background is necessary. Relevant material facts are enumerated as below:-

a) Plaintiff arranged first marriage of defendant in 2008 at his expenses.

b) Upon dissolution of first marriage, defendant desired to marry one Mr. Amit Garg. Since marriage was unacceptable to parents of the parties, plaintiff offered shelter at his house.

c) Subsequently, on request of defendant, plaintiff out of love and affection, arranged house for defendant and her husband at H. No. 1709/03, Govind Puri Extension, Kalkaji, New Delhi-110019.

d) Later, defendant informed plaintiff that she was feeling suffocated in house whereupon plaintiff then agreed to purchase property bearing No. 1682, Gali No. 2, Govind Puri Extension, Kalkaji, New Delhi -110019 from Mr. Ram Gopal. Out of love, plaintiff got sale deed executed in



defendant's name though plaintiff paid entire sale consideration amount vide cheque bearing No. 000321 dated 28.03.2021 for Rs. 9,20,000/- draw on Punjab Nation Bank, Kalkaji, New Delhi and spent Rs. 50,000/- on stamp duty, legal charges etc.

e) Plaintiff undertook above transaction based on promise and assurance of defendant that she and her husband would make arrangements for their residence within period of one year and would transfer subject property. Defendant and her husband further promised and assured that if they could not arrange separate accommodation, they would pay sale consideration of Rs. 9,20,000/- back to plaintiff alongwith 12% interest per annum.

17. It is stated that cause of action arose on different occasions. It first arose, when defendant upon end of one year from 28.03.2011 neither paid back sale consideration amount nor arranged alternate accommodation. In March-2014, defendant and her husband purchased and shifted to flat No. 101, Tower No. C-7, SRS Residency, Sector-88,

Greater Faridabad, Haryana. Upon shifting, defendant as per her promise did not refund sale consideration amount or transferred subject property back to plaintiff. Subsequently, plaintiff requested defendant to keep her part of promise and transfer Subject property back to plaintiff. However, defendant refused to keep her promise and instead filed suit No. 150/2014 against plaintiff claiming her share in plaintiff's lawful properties.

18. It is stated that question as to whether a suit is barred by limitation would depend upon facts and circumstances of each case and only averments made in the plaint are relevant for the said purpose. At this stage, court would not consider pleas taken by defendant in written statement. It is stated that present suit is not barred by limitation and has been filed within prescribed period of limitation.



19. It is prayed to dismiss application filed by defendant.
20. I have heard arguments addressed by respective counsels and perused the record including judgment filed by plaintiff as well as by defendant.
21. Counsel for plaintiff during course of arguments drew my attention to order dated 14.10.2019 passed by Ld. Predecessor of this Court dealing with subsisting cause of action in present suit and submitted that the said order has not been challenged by defendant and thus has attained finality and present application is not maintainable for the reason that plaintiff does not have subsisting cause of action in his favour.
22. Counsel for defendant during course of arguments submitted that defendant is not pressing present application so far as subsisting cause of action in favour of plaintiff is concerned.
23. Defendant in present application has taken ground that plaintiff did not mention correct value of suit property for the purpose of court-fee as well as jurisdiction. Counsel for defendant during course of arguments submitted that plaintiff has claimed decree of specific performance and in alternate has prayed for passing decree for sum of Rs.13,38,600/- but has not valued plaint for both the reliefs for the purpose of court-fee as well as jurisdiction and merely valued suit for the purpose of court-fee and jurisdiction for relief of recovery of money of Rs.13,38,600/- which is not in accordance with law laid down by Hon'ble High Court of Delhi in case titled as '**Rampur Distillery & Chemicals Co. Vs. Union of India, 1995 IAD Delhi 425**', wherein it was held that "In every suit the plaintiff must clearly state valuation for each of the reliefs separately, further stating the amount of Court fee which was being paid by the plaintiff. The Court should not be left to stumbling through the file and finding out the exact amount of the court fee paid".
24. Counsel for plaintiff on the other hand submitted that plaintiff has sought passing decree of specific performance qua properly No.1682, Gali No. 2, Govindpuri Extension, Kalkaji,



New Delhi and in alternate, has prayed for passing decree for sum of Rs.13,38,600/-. She submitted that only one prayer can be granted by this Court and both the prayers cannot be granted simultaneously by this Court. She submitted that consideration amount for purchase of aforesaid property as per sale deed is Rs.9,20,000/- only and that plaintiff has already paid court fee for amount of Rs. 13,38,600/- amounting to Rs. 15,450/- and in these circumstances, it cannot be said that plaintiff has not valued suit for the purpose of court-fee and jurisdiction properly. She filed judgment in case titled as **“Jafar Iman Vs. Devender Chauhan & Others CS (OS) No. 1843/2013 decided on 15.05.2014”** wherein it was held that “To settle the controversy, it is necessary to determine the nature of the suit filed by the plaintiff and the nature of reliefs claimed. The plaintiff has sought specific performance of an agreement to sell and further cancellation of the sale deed of the purchasers subsequent to the agreement to sell in favour of the plaintiff. If the two reliefs were independent of each other then the plaintiff would necessarily have to value the suit based on the two independent reliefs and Pay the appropriate court fee thereon.”

25. I am of the view that out of two reliefs claimed by plaintiff, only one relief can be granted to plaintiff. Sale consideration amount of property No. 1682, Gali No. 2, Govind Puri Extension, Kalkaji, New Delhi is Rs.9,20,000/- only and amount of recovery sought by plaintiff including interest comes out to be Rs. 13,38,600/- and plaintiff has paid court-fee according to amount of Rs.13,38,600/- and value of suit for the purpose of jurisdiction and court-fee for relief of specific performance is lessor than monetary amount claimed by plaintiff and it cannot be said that plaintiff has not valued present suit properly for the purpose of court-fee and jurisdiction. Judgment in Rampur Distillery (supra) does not apply in facts and circumstances of present case and present plaint cannot be rejected on the said ground. Hence, this contention of defendant is rejected.



26. Defendant has claimed that present suit is not within period of limitation as aforesaid property was purchased on 29.03.2011 by defendant and cheque of Rs.9,20,000/- is dated 28.03.2011. It is contended by defendant that present suit was filed by plaintiff on 08.05.2014 i.e. after period of more than 03 years after 28/29.03.2011 which prima-facie shows that suit filed by plaintiff is beyond prescribed period of limitation and hence, plaint deserves to be rejected.

27. Counsel for plaintiff on the other hand submitted that for the purpose of an application under Order VII Rule 11 CPC, only contentions in the plaint and annexed documents are to be considered by the Court and written statement or other pleas taken by defendant cannot be taken into consideration. She submitted that as per contentions of plaintiff, cause of action arose in favour of plaintiff after expiry of one year from 28.03.2011. She submitted that defendant promised to arrange for her own accommodation within period of one year after plaintiff purchased aforesaid property for her and promised that she will pay amount of Rs.9,70,000/- to plaintiff in case, she is not able to arrange a separate accommodation alongwith interest. She submitted that cause of action in favour of plaintiff arose after expiry of one year from 28.03.2011 and present suit has been filed well within 03 years of 28.03.2012 and has been filed within prescribed period of limitation having been filed on 08.05.2014.

28. I find force in submissions made by counsel for plaintiff qua aspect of limitation at this stage and otherwise also, separate issue in this regard has been framed vide order dated 14.10.2019. At this stage, as plaintiff has mentioned period of limitation to start after period of 01 years from 28.03.2011, present suit prima-facie at this stage cannot be said to have been filed beyond period of limitation. Hence, this contention of defendant is rejected.



29. In view of my above-made discussion, I am of the view that application filed by defendant is without merits and is accordingly dismissed.

19. Upon perusal of the contents of the impugned order, it is made out that the learned Court below appreciated the material on record and gave its observations regarding the arguments advanced by the learned counsel for the petitioner in the following manner:

(i) On the aspect of suit being time barred, the learned Trial Court held that the cause of action in favor of the respondent only arose after expiry of the year subsequent to issuance of the cheque and therefore, the suit was well within the statutory limitation.

(ii) With regard to the issue regarding the incorrect payment of Court fees amount, the learned Trial Court perused the contents of the plaint and the prayer made therein, whereby, it was stated that the amount of recovery sought by the plaintiff/respondent was stated to be Rs. 13,38,600/- and the respondent had duly paid the court fees on the said amount.

20. In view of the foregoing discussion, the learned Trial Court held the application filed for rejection of the plaint to be bereft of any merit.

21. Now advertent to the contentions advanced by the learned counsel for the petitioner in the instant revision petition, it is stated that the learned Trial Court failed to appreciate its own findings in another application, whereby, it was stated that the suit filed by the plaintiff/respondent *prima facie* does not showcase a strong case.



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22. With regard to the same, this Court deems it appropriate to reiterate the settled position of law regarding the adjudication of the application filed under Order VII Rule 11 CPC.

23. As reiterated by the Hon'ble Supreme Court and this Court in a catena of cases, the adjudication of an application filed for dismissal of the plaint can only be done by perusing the contents of the plaints, and therefore, the Courts are duty bound to confine themselves to the contents of the plaint only.

24. The aforesaid position of law was reiterated by the Hon'ble Supreme Court in the case of *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633, and therefore, it is clear that the Courts are required to determine the question of rejection of the plaint only on the basis of the averments made in the plaint.

25. In the instant matter, the contents of the impugned order makes it clear that the primary contentions for rejection of the plaint were duly dealt with by the learned Court below in paragraph nos. 25 – 28 and the perusal of the said paragraphs makes it clear that the learned Court below had duly answered the said issues.

26. Furthermore, the learned Court below also dealt with the contention regarding the lapse of limitation by stating that the plaintiff/respondent was made a promise for an alternate accommodation and the cause of action only arose after failure on part of the petitioner to provide him the said alternate accommodation or the payment. Therefore, the suit was filed within the prescribed limitation period.



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27. In any case, the contention regarding the same can be dealt with by the Court at an appropriate stage and adjudication of the said contention cannot be done in an application filed for rejection of the plaint, i.e., in the initial stage of the suit.

28. In view of the foregoing submissions, this Court does not find any force in the arguments advanced by the learned counsel for the petitioner and therefore, the instant petition being bereft of any merit is liable to be dismissed.

29. Accordingly, the instant petition is dismissed and the impugned order dated 15th January, 2024 passed by the learned ADJ-07 Saket Courts, Delhi is hereby upheld.

30. Pending applications, if any, stands dismissed.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 26, 2024

RK/AV/RYP

Click here to check corrigendum, if any