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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 25th November, 2024**+ **C.R.P. 248/2019 & CM APPL. 47721/2019****GATI KINTETSU EXPRESS PVT LTD**

.....Petitioner

Through: Mr. Anant Bhushan, Advocate
through VC.

versus

M/S NARMADA MEDICAL AGENCY & ANR

.....Respondents

Through: None.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Revision Petition under *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as "CPC, 1908") has been filed on behalf of the Petitioner/Defendant No.2 against the Order dated 11.09.2019 *vide* which the Application under *Order VII Rule 11* read with *Section 151 of CPC, 1908* filed by the Petitioner/Defendant No. 2, has been dismissed.

Respondent No.1/Plaintiff had filed a suit for Recovery of Rs.1,02,869/- along with interest at the rate of 18% per annum. It is submitted that Respondent No.2/Defendant No.1 had placed an Order for medicines worth Rs.1,02,869/- which were delivered *vide* Bill No.SB/18-19/00472 dated 12.04.2018 through the Revisionist/Defendant No.2, the carrier. Respondent No.1/Plaintiff stated that the medicines were to be delivered through Defendant No.2 on the condition of Cash on Delivery (COD) to Defendant No.1,

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however, Defendant No.2 (the carrier) had delivered the goods but had failed to collect the cheque amount from Defendant No.1.

2. The Plaintiff, thus filed a suit against Defendant No.1 and the Revisionist/Defendant No.2 for recovery of Rs.1,02,869/- along with interest at the rate of 18% per annum.

3. The Revisionist/Defendant No.2 filed an Application under *Order VII Rule 11 CPC* for rejection of the suit essentially on two grounds namely :-

(i) that the Plaintiff and Defendant No.1 have been arrayed as parties in the Proprietorship Firm name even though it is not an independent legal entity in itself, and

(ii) that the Revisionist/Defendant No.2 (*carrier*) has no liability to pay the amount which is due from Defendant No.1.

4. The learned Civil Judge considered both grounds and rejected the Application *vide* Order dated 11.09.2019.

5. Aggrieved, present Revision petition has been filed.

6. The impugned Order dated 11.09.2019 has been challenged by the Petitioner/Defendant No.2 on the ground that as per the averments in the Complaint, Petitioner/Defendant No.2 is only a carrier who picked up the consignment for the purpose of transportation of goods to Respondent No. 2/Defendant No. 1 with the condition of *Cash on Delivery*. Merely because Petitioner/Defendant No.2 had failed to collect the cheque at the time of delivery of the said goods from the Respondent No. 2/Defendant No. 1, it cannot be held liable along with Respondent No. 2/Defendant No. 1, to jointly pay the said amount. At best, it can be held liable for deficiency of Services, but cannot be



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held liable for the cost of the goods for which Defendant No. 1 alone, to whom the goods were delivered, is liable. The Petitioner/Defendant No.2 being a carrier, is not a necessary and property party to the Suit.

7. It is further contended that the Suit filed on behalf of the Respondent No.1/Plaintiff is an ordinary Suit, despite which the right to file the Written Statement has been taken away. It is settled proposition of law that the time taken for disposal of the Application under *Order VII Rule 11* read with *Section 151 of CPC, 1908* is liable to be deducted while calculating the time for filing the Written Statement. The written statement has been wrongly denied to be taken on record merely on the ground that it has been filed beyond the Statutory period.

8. None appeared on behalf of the Respondents. The Respondents are proceeded *ex parte*.

9. **Submissions Heard.**

10. ***The first ground of challenge*** under *Order VII Rule 11 CPC* was that the Proprietorship Firm could not have been sued in the name of the Firm. A sole Proprietorship Firm is not an independent legal entity and should have been sued in the individual name of the Proprietor.

11. It is correct that under the law the Proprietorship Firm has no independent legal entity, but the perusal of the Memo Of Parties show that while mentioning the name of the Firm, it is also indicated that it is represented through its sole Proprietor. The error in the manner of describing the parties is only a technical error which can always be corrected.



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12. Learned Civil Judge has rightly observed that such technical grounds which are amenable to correction, cannot be made a basis for rejection of the Suit.

13. ***The second ground*** taken was that because the Revisionist was only a carrier who discharged its duty of delivering the goods, it cannot be made liable for recovery of the value of the goods so delivered to the Respondent No.2. However, this argument again has no basis because admittedly the delivery of the Medicines was to be made against *Cash on Delivery*. It is the Revisionist who had failed to discharge its duty of delivering the goods only after collecting the cash/cheque. Instead of discharging its duty, it has delivered the goods without collecting the payment, which has resulted in a loss to the Plaintiff/Respondent No.1.

14. The learned Civil Judge has rightly observed that the basis of seeking a claim of the money from the Revisionist, is essentially its failure to collect the money from Respondent No.2 in terms of its obligations while delivering the goods.

15. ***The third ground of challenge*** taken by the Revisionist is that his right to file the Written Statement has been closed even though it was an ordinary Suit, and it is settled law that the time taken in disposal of Application under *Order VII Rule 11 CPC*, is to be excluded while calculating the time for filing the Written Statement. However, it is pertinent to observe that this particular Order whereby the right of filing the Written Statement has been denied, was not considered in the impugned order dated 11.09.2019 while deciding the Application under *Order VII Rule 11 CPC*.



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16. Since this relief is not within the scope of the present Revision Petition, the same cannot be considered herein.

17. The Revision Petition is without merit and it is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 25, 2024
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