



2024:DHC:7940



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

% **Date of order: 15th October, 2024**

+ **C.R.P. 324/2023 & CM APPLs. 57771-74/2023**

PARDUMAN KUMAR HANDAPetitioner

Through: **Mr. Varun Singh and Mr. Ytharth
Kumar, Advocates.**

versus

RAJAN HANDA & ANR.Respondents

Through: **Ms. Shivani Kher, Mr. Rakesh Lakra,
Mr. Kumar Ravi Ranjan, Mr. Bhavya
Sharma, Advocates for R-1.
Mr. Shoeb Shakeel, Advocate for
respondent No.2 (Through VC)**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

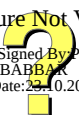
1. The instant petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter as the “CPC”) has been filed on behalf of the petitioner seeking setting aside of the order dated 25th August, 2023 (hereinafter as the “impugned order”) passed by the learned Civil Judge-03, South-East District, Saket Courts, New Delhi (hereinafter as the “Trial Court”) in suit bearing no. CS SCJ 1525/21, wherein the application under Order VII Rule 11 of the CPC was dismissed.

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2. The brief facts of the case are that the petitioner herein is the father of respondent no. 1 and respondent no. 2, who are his elder and younger sons, respectively. The petitioner was the owner of property bearing no. C-8, second floor, East of Kailash, New Delhi – 110065, admeasuring 300 square yards (hereinafter as the “suit property”) vide conveyance deed, which was duly registered with the Sub-Registrar Office, New Delhi.

3. It is averred that in the year 2000, the respondent no. 1 has started his own proprietorship firm under the name and style of M/s Anjana International Industries, which was being operated from the suit property itself.

4. On 25th October, 2019, the parties herein i.e., the petitioner, respondent no. 1 and respondent no. 2, entered into a Family Settlement Agreement (hereinafter as the “Settlement”). As per the said Settlement, the petitioner agreed to gift the suit property *via* Gift Deed to the respondent no. 1 and in return, the respondent no. 1 was required to maintain the petitioner and permit him to live on the premises of the suit property. Accordingly, the suit property was transferred in the name of the respondent no. 1.

5. Thereafter, being discontented with the respondent no. 1 for not providing the maintenance, the petitioner filed a complaint with the Tribunal of Maintenance of Parents and Senior Citizen (hereinafter as the “Tribunal”) against the respondent no. 1 on 1st December, 2021, seeking interim maintenance as well as declaration of Gift Deed as null and void as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter as the “Act”).





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6. While the aforesaid case was pending before the Tribunal, the respondent no. 1 filed a civil suit bearing no. CS SCJ 1525/21 before the learned Trial Court seeking injunction against the petitioner and respondent no. 2 over the possession of suit property and the motor-vehicles owned by him.

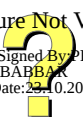
7. Aggrieved by the filing of the said suit, the respondent no. 2 filed an application for rejection of the plaint under Order VII Rule 11 of the CPC, which was supported by the petitioner, on the ground that the said suit was barred by Section 27 of the Act. However, the learned Trial Court vide impugned order dated 25th August, 2023 dismissed the application stating that the plaint is not barred by law i.e., Section 27 of the Act.

8. Aggrieved by the impugned order, the petitioner has filed the instant petition.

9. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erroneously dismissed the application under Order VII Rule 11 of the CPC as the suit filed for injunction is barred by law in view of Section 27 of the Act.

10. It is submitted that the learned Trial Court erred in not observing that the subject matter of the suit touches upon the essence of the Act, thereby falling within the ambit of the Act. Hence, the civil courts are barred from exercising its jurisdiction as per Section 27 of the Act.

11. It is submitted that the learned Trial Court failed to consider that the subject matter of the suit is also the subject matter of the proceedings before the learned Tribunal and therefore, as per Section 27 of the Act, the Civil





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Courts are barred from granting any injunction when the subject matter in question is within the scope of the Act.

12. It is submitted that the learned Trial Court failed to observe that if the learned Tribunal declares the Gift Deed as null and void under Section 23 of the Act, a subsequent relief with respect to the respondent no. 1's rights over the suit property would also *ipso facto* be null and void as the respondent no. 1 has attained the ownership only *via* the Gift Deed.

13. It is submitted that the learned Trial Court erred in observing that since respondent no. 1, being a non-senior citizen, cannot seek any relief under the Act, the suit filed for injunction is maintainable and not barred by law.

14. It is further submitted that the learned Trial Court erred in holding that the learned Tribunal does not have the requisite jurisdiction to adjudicate on the possession and rights over the motor-vehicles.

15. It is submitted that the Act is a piece of beneficial legislation, which was enacted to provide speedy redressal of issues with respect to the maintenance for senior citizens. Therefore, continuation of the suit, which is expressly barred by law, would defeat the purpose of the legislation.

16. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

17. *Per Contra*, learned counsel appearing on behalf of the respondent no. 1 submitted that the learned Trial Court has rightly dismissed the application for rejection of plaint under Order VII Rule 11 of the CPC on the ground that the plaint is not barred by Section 27 of the Act.





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18. It is submitted that the learned Trial Court was correct in observing that the respondent no. 1, being a non-senior citizen, cannot seek any relief under the Act invoking the provisions therein and therefore, the respondent no. 1 has no other remedy but to file the suit for injunction.

19. It is further submitted that the relief sought by the respondent no. 1 in the said suit cannot be granted by the provisions of the Act and therefore, Section 27 of the Act cannot be made applicable in barring the jurisdiction of civil courts.

20. Therefore, in light of the aforementioned contentions, it is prayed that the instant petition, being devoid of any merit, may be dismissed.

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

22. It is the case of the petitioner that the learned Trial Court erred in dismissing the application under Order VII Rule 11 of the CPC, when the said suit filed by the respondent no. 1 is not maintainable before the learned Trial Court as the jurisdiction of the Civil Courts are explicitly barred by Section 27 of the Act.

23. Refuting the case of the petitioner, it is the contention of the respondent no.1 that the suit for injunction does not concern with the provisions of the Act as the Act is incapable of providing the relief sought by the respondent no. 1. Moreover, the respondent no. 1 being a non-senior citizen cannot seek any relief as per the provisions of the Act, thereby not making a fit case to attract Section 27 of the Act. Therefore, the learned Tribunal was right in dismissing the application for rejection of the plaint.





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24. Therefore, the limited question for adjudication before this Court is whether the learned Trial Court erred in dismissing the application for rejection of plaint under Order VII Rule 11 of the CPC.

25. At this juncture, this Court deems it apposite to peruse the findings of the impugned order and the relevant portion of the same is reproduced hereunder –

“16. For the purpose of the present application, the applicant/defendants have relied upon a judgment titled as Sunny Paul & Anr. Vs. State of NCT of Delhi & Ors. WP(C) 10469/2015 decided on 15.03.2017 of Hon’ble High Court of Delhi. In the above judgment the scheme and scope of Maintenance of Senior Citizen Act, 2007 has been discussed. However, the facts of the said case does not find favour in the present case as the primary issue before the Hon’ble Court in the above judgment was on the assessment of the Act, whether the Act provides the sole remedy of mandatory maintenance by the children/relative and/or does it provide for eviction of adult children in cases of parental abuse, wherein the Tribunal had directed eviction of the appellant children therein from their home in pursuance of maintenance order. It was only against the said order that the appeal before the Hon’ble High Court of Delhi was preferred. The said judgment does not speak of the jurisdiction and inter-play of a Tribunal constituted under the Act and a Civil Court. Therefore, the reliance of the defendants on the above said judgment is found to be misplaced.

17. Further, upon perusal of the Section 27 of the Act, it is clear that the above Act bars the jurisdiction of a Civil Court w.r.t. any thing, which is intended to be done by or under the Act. Therefore, it is imperative that the intent of the Act be also appreciated. Upon the reading of the preamble of the Act, it is apparent that the legislation was enacted for the welfare and





maintenance of senior citizen. Therefore, only a senior citizen/senior citizen parent can be a beneficiary/applicant to reap the benefits of the Act. Further, upon reading of Chapter II of said Act, it is found that the Act enforces the obligation of the children/grand children to maintain senior citizens with dignity. Further, the Tribunal formed under the Act can order maintenance of senior citizens(Section 9 of the Act), alter allowances(Section 10 of the Act), further, it can also enforce orders of maintenance(Section 11 of the Act). Further, by way of Section 23, a Tribunal under the said Act is also conferred with the power to declare an instrument of gift as void in certain cases. Therefore, it is apparently clear that a Tribunal can make any effective order that can enforce any rights in favour of the senior citizen bestowed by the Act.

18. As discussed above, the bar of Section 27 only applies when an act intended to be done under the said Act is sought to be enforced before Civil Court. In such a situation, the Civil Court is legally barred from granting a relief of injunction. However, the Act itself by virtue of Section 5 state that an applicant can only be a senior citizen or a parent, which consequently mean that any other person including the children of such senior citizens are precluded from asserting any right before the Tribunal. In fact the Act does not make a provision w.r.t. any rights of any person other than a senior citizen. In the present case, plaintiff herein is neither a senior citizen nor is asserting any relief which can be granted or intended to be granted through the said Act. In the present case, plaintiff is neither seeking any kind of maintenance/allowance/alteration of allowance nor enforcement of any order of maintenance has been sought neither plaintiff is seeking any declaration qua the gift deed dated 25.10.2019. Plaintiff is merely seeking to protect his possession over the suit property, wherein cause of action is stated to have accrued on every date when the defendants have threatened the possession of the plaintiff. Upon reading of the





scheme of the Act, it can be easily inferred that the relief sought by the plaintiff herein cannot be asserted before a Tribunal under the Act because plaintiff is not a senior citizen and furthermore, the Act has been legislated only for a limited purpose by providing a summary remedy i.e. to ensure welfare of senior citizens, on the other hand, the jurisdiction of a Civil Court is expansive and wide by virtue of Section 9 of CPC. Furthermore, as discussed above, the Act itself by virtue of Section 5 bars the locus of the plaintiff to claim any relief before the Tribunal.

19. Furthermore, by way of instant suit, plaintiff is also seeking mandatory injunction, seeking directions to the defendant to return keys of two cars bearing no. DL3CBE1299 and HR26BD2295. It is even upon a cursory reading of the Act, it is manifestly clear that the Tribunal under the Act does not have the requisite jurisdiction to adjudicate upon the possession and rights over a motor vehicle belonging to children of senior citizen. Therefore, it cannot be said that the relief no. 2 as sought by the plaintiff is covered by the Act.

20. Defendants have also taken objection that the suit has been instituted in the name of the plaintiff, however, the motor vehicles in question have been registered in the name of a proprietorship firm of the plaintiff which is Anjana International. Upon perusal of the plaint, it is found that plaintiff has specifically pleaded that he is the sole proprietor of Anjana International, considering that the legal entity of the sole proprietorship firm cannot be separated from its proprietor, therefore, the institution of the present in the name of the plaintiff is neither illegal nor irregular. Furthermore, misjoinder/non-joinder and wrong nomenclatures cannot be made a ground for rejection of plaint as the same has not been enumerated as one of the grounds under O VII R 11 CPC.”





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26. In the aforementioned extracts, while adjudicating the application for rejection of the plaint, the learned Trial Court observed that the relief sought by the respondent no. 1 in the suit i.e., injunction of suit property and motor vehicles, falls outside the purview of the Act, and therefore, the bar imposed on the jurisdiction of the Civil Courts under Section 27 of the Act is not applicable in the case before the learned Court below.

27. Moreover, by delving into the objective and intention of the Act, the learned Trial Court observed that the respondent no. 1, being a non-senior citizen, cannot seek a remedy under the Act as the provisions therein make it clear that only a senior citizen can file an application under the Act. In view of the same, the learned Trial Court dismissed the application under Order VII Rule 11 of the CPC as the plaint filed by the respondent no. 1 is not barred by law.

28. Before going into the merits of the case, it is imperative for this Court to understand the scope of Order VII Rule 11 of the CPC, wherein the plaint is meant to be read meaningfully and as a whole and if the averments therein are manifestly vexatious or meritless in not disclosing a clear right to the suit, the Court is empowered to exercise its power under Order VII Rule 11 of the CPC to reject the plaint. Since the contention of the petitioner herein is that the plaint is barred by law, clause (d) of the provision is attracted and if the Court is of the view, on *prima facie*, that the plaint appears not to be barred by law, the same shall not be dismissed.

29. In view of the same, this Court will deal *firstly*, with the issue of applicability of Section 27 of the Act and *secondly*, with the issue of whether





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the respondent no.1 is left remediless, if the reliefs sought in the suit falls within the ambit of the Act.

30. At this juncture, it is imperative for this Court to delve into the objective and intention for the enactment of the Act. The Statement of Objects and Reasons of the Act clearly indicates that it is a piece of beneficial legislation, which was enacted for the purpose of providing maintenance and looking after the senior citizen's wellbeing. In the interest of their welfare, the Act also established special Tribunals for speedy redressal of issues, especially pertaining to the maintenance, so that they are not subjected to the taxing and time-consuming procedures before the Civil Courts.

31. Adverting to the issue of applicability of Section 27 of the Act, it is apposite to look into the contents of the provisions, which state that the civil courts are barred from exercising jurisdiction in adjudicating or granting injunction in matters which fall within the purview of the Act. Therefore, for the bar to be imposed upon the civil courts, the subject matter of the suit should fall within the limits of the Act.

32. In light of the same, it is pertinent for this Court to peruse the averments made in the plaint to determine if the subject matter of the suit falls within the scope of the Act.

33. It is averred in the plaint that the parties herein have entered into the Settlement Agreement and the Gift Deed, which was accordingly executed in favour of the respondent no. 1, thereby transferring the ownership of the suit property in his name. It was also stated that as per the terms and conditions





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of the Settlement, the respondent no. 1/plaintiff has handed over a post-dated cheque of Rs.90,00,000/- in favour of the petitioner and has been maintaining the petitioner by providing him with all the requisite financial needs.

34. As mentioned earlier, the respondent no. 1/plaintiff runs his office from the suit property and therefore, averred that the cause of action arose when the petitioner refused the entry of the respondent no. 1/plaintiff's employee on the suit property and additionally, when the respondent no. 1 was away from the home, the petitioner permitted the respondent no. 2 to illegally use his two cars namely, Honda Civic and BMW 530i, bearing registration no. DL-3-CBE-1299 and HR-26-BD-2295, respectively, without seeking permission or consent of the respondent no. 1. When the respondent no. 1 asked to return the keys of the said cars, the same was refused by the petitioner, thereby illegally holding the possession of the cars. In light of the same, the suit was filed before the learned Trial Court seeking for the injunction of the suit property and motor-vehicles against the petitioner and respondent no. 2.

35. The cause of action as depicted in paragraph no. 29 of the plaint in question is extracted below –

“29. That the cause of action for filing the present suit firstly arose on 23.10.2021, when in absence of the plaintiff, the defendant no. 2 sent back the employee of the plaintiff from the suit property by saying that he cannot entered into the suit property without his absence. The cause of action also arose from the month of November 2021, when the defendants trying to make quarrel with the plaintiff and his employees and trying





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to put hindrance in using the suit property by the plaintiff and his employees. The cause of action for filing the present suit also arose when during the period 03.10.2021 to 13.10.2021 when the plaintiff was abroad, the defendant no. 2 in the absence of the plaintiff and without his consent and permission allow the defendant no. 1 to illegally use the Honda Civic Car of the plaintiff being No. DL-03-CBE-1299. The cause of action also arose when the plaintiff sent an e-mail to the defendant no. 2 and requested him to return his said car. The cause of action also arose on the dates when the plaintiff requested the defendant no.2 to hand over the keys of his two cars bearing no. DL3CBE1299 Honda Civic and HR 26 BD 2295 black colour BMW 530i, but the defendant no.2 under the influence of defendant no.1 refused to hand over the said keys of the said Cars to the plaintiff. The cause of action also arose on the dates when the defendant no.1 tried to stay in the suit property without the permission and consent of the plaintiff. The cause of action also arose on the dates when the plaintiff requested the defendant no.2 to permit him to install more CCTV Cameras over the suit property and to have the access to the recording of the same on disk weekly, but the defendant no.2 did not allowed the same to the plaintiff. As the defendants are still adamant in putting the hindrance of using the suit property by the plaintiff and his employees conveniently and has not handed over the keys of the above said cars of the plaintiff to the plaintiff and also not allowing the plaintiff to install more CCTV Cameras for the purpose of safety and security, hence, the cause of action still continuing and subsisting.”

36. Upon perusal of the relevant paragraphs of the plaint, it is observed that the relief sought by the respondent no. 1/plaintiff is for injunction of suit property and motor-vehicles and the relief of which cannot be granted by the provisions of the Act as the said enactment does not provide for effective





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enforcement of his possession and rights over the suit property and motor-vehicles. Hence, the subject matter of the suit falls outside the purview of the Act.

37. Therefore, since the subject matter of the suit filed for injunction does not fall within the scope of the Act, the bar imposed by Section 27 of the Act cannot be made applicable on the jurisdiction of the civil courts.

38. A similar observation has been made by the Division Bench of High Court of Karnataka in the case of ***H.V. Shivanna vs. Ananthamma, 2022 SCC OnLine Kar 1826***, wherein it was observed as follows –

“14. It is evident from Section 9CPC that the Civil Court has got a jurisdiction to try the suit which are Civil in nature. A special enactment does not bar suit under general law which does not fall within the scope of any of the special enactment. When Special Acts create a right and provide a forum for effective enforcement of such right and expressly bars the jurisdiction of the Civil Court to try such suits, then ouster of the Civil Court jurisdiction has to be upheld. But the situation will be different where the special enactment neither creates the right in question nor provides any effective remedy or having created no forum for adjudication of any dispute arising out of such right or liability is provided, in such a situation, the ouster of the Civil Court's jurisdiction is not to be easily inferred. The Hon'ble Supreme Court in the case of STATE OF A.P. v. MANJETI LAXMIKANTHA RAO reported (2000) 3 SCC 689 : AIR 2000 SC 2220 has held that exclusion of jurisdiction of civil Court, not to be readily inferred. Test to be adopted when examining question whether civil Court has jurisdiction, is — (i) Is legislative intention of excluding jurisdiction explicit or clear by necessary implication; and (ii) Does the statute provide adequate remedy in cases of grievance against order made under the Statute. It is settled principle of law that no





party has vested right to file a case/proceeding before a particular forum, unless it provides effective remedy under such forum. Any provision ousting the jurisdiction of civil Court has to be construed strictly.

21. Therefore, in view of the principles stated in the above referred decisions, if the plaint averments are considered, it does not disclose that the plaint is barred by any law, much less under Senior Citizens Act, 2007. The Trial Court has referred to the decision in the case of SMT. PACHAMMA (supra) [(2017) 3 AKR 850] and referred to paragraph Nos. 11 and 12. The said judgment has no applicability to the present case. In that case, the Learned Single Judge has dealt with a situation that the plaintiff who was a widow has sought direction to the Government to take steps to put her in possession of a house property. The facts and issues involved in this suit are totally different. Neither it is contended that the plaintiff has thrown out the defendant from her house or the plaintiff is bound to provide any maintenance to defendant. On the other hand, the property which is purchased by defendant was subsequently gifted by defendant to some other persons. The plaintiff has transferred Rs.12,00,000/- as part performance of contract of sale to the defendant's account. Therefore, the facts and principles of said decision is not applicable to the present suit. The Trial Court has also referred to the decision in the case of DEEPAK (supra) [AIR 2016 Raj 188] . Again the facts stated in that decision has no relevance to issues involved in this suit. Because, in that suit power of attorney stated to have been obtained by way of fraud or coercion. The attorney i.e., the son of the senior citizens has cheated the person/father who had provided funds for execution of the agreement to sell, but the property was got transferred in the name of daughter-in-law who is the wife of petitioner therein, instead of transferring the flat in the name of mother of petitioner therein who has





provided the funds. Therefore, that decision will also not help the defendant in any way.

23. Therefore, Section 23 of the Senior Citizens Act, 2007 is not applicable to the facts of this suit as evident from the ingredients of the said Section. The agreement of sale neither transfers or create any right nor any title in the suit schedule property. There is no Clause in the agreement that the plaintiff shall provide basic amenities and basic physical needs to the defendant in lieu of agreement of sale. On the other hand, merely because the defendant is a Senior Citizen, the provisions of Senior Citizens Act, 2007 particularly Section 23 does not apply to the nature of suit, the averments in the plaint and relief sought by the plaintiff. Admittedly, the suit is one for Specific Performance of agreement of sale which is a civil right. It is filed under Specific Relief Act, 1963, which provides for specific performance of contracts as per Section 9 of Specific Relief Act. Therefore, it is only Civil Court which can entertain such suit There is nothing in the Specific Relief Act to exclude the Jurisdiction of Civil Court and confer jurisdiction on tribunal to enforce such contracts.

24. In view of the above discussion, if Section 9CPC, Sections 23 and 27 of Senior Citizens Act, 2007 are considered, it is evident that, the jurisdiction of Civil Court is not excluded to try this suit and provisions of Senior Citizens Act, 2007 has no application to this suit."

39. Considering the aforesaid extracts of the case, it is perceived that when the Special Acts creates certain rights and appropriate forums for the redressal of the same, then the bar on the civil courts with respect to the enforcement of such rights is justified. However, when the special enactment





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itself creates and provides no such right or remedy, then the bar cannot be imposed upon the jurisdiction of civil courts.

40. Therefore, the Act herein being a special enactment, legislated for the purpose of providing maintenance and welfare of the senior citizens, does not provide any relief pertaining to injunction of the suit property and motor-vehicles. The said relief cannot be sought as the Act is silent about the same and therefore, Section 27 of the Act barring the jurisdiction of the civil courts cannot be applied in the instant case.

41. Now, advertng to the second issue on the respondent no. 1 being remediless.

42. In its impugned order, the learned Trial Court observed that the respondent no.1 being a non-senior citizen cannot advert to the benefits of the Act as the same are applicable only to the senior citizens.

43. However, it is the contention of the petitioner that the subject matter of the suit and the reliefs sought therein falls within the purview of the Act and hence, the respondent no. 1 can only approach the learned Tribunal for seeking any relief.

44. In view of the same, it is pertinent to note that the Act is enacted for the purpose of providing maintenance to the senior citizens. In the instant case, it is a known fact that the respondent no. 1, being a non-senior citizen, filed a suit for injunction, not only against the petitioner, who is a senior citizen, but also against the respondent no. 2, who is a non-senior citizen.

45. It is observed that even if the subject matter of the suit falls within the ambit of the Act, the respondent no. 1 will be left remediless as he cannot





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invoke the provisions of the Act, especially against the respondent no. 2, because of both being non-senior citizens, and will be barred to approach the civil courts by Section 27 of the Act. It is also observed by the Hon'ble Supreme Court in the case *Sunil Vasudeva and Others vs. Sundar Gupta and Others*, (2019) 17 SCC 385 that the no party could be left remediless and in such cases, the grievance raised by the party before a particular court of law has to be examined by its own merits.

46. In light of the foregoing discussion, this Court is of the view that the suit filed by the respondent no.1/ plaintiff before the learned Trial Court is not barred by law as the Act cannot grant any reliefs sought by the respondent no. 1 therein i.e., injunction of the suit property and motor-vehicles against the petitioner and respondent no. 2. Moreover, even if the subject matter of the suit falls within the purview of the Act, the respondent no. 1 will be left remediless as he being a non-senior citizen cannot invoke the provisions of the Act. Therefore, the learned Trial Court was right in dismissing the application for rejection of the plaint under Order VII Rule 11 of the CPC as the plaint is not barred by law.

47. Therefore, considering the limited scope of interference under the civil revisional jurisdiction, this Court is not inclined to exercise its revisional powers since no infirmity or irregularity, or illegality is found in the impugned order.

48. In view of the foregoing discussions of facts and law, the impugned order dated 25th August, 2023 passed by the learned Civil Judge-03, South-





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East District, Saket Courts, New Delhi in suit bearing no. CS SCJ 1525/21 is upheld.

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

50. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 15, 2024

NA/mk/av

Click here to check corrigendum, if any

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KUMAR BABBAR
Signing Date: 23/10/2024
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