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

% Date of decision: 5th January, 2024

+ C.R.P. 378/2023 & CM APPL. 65356/2023 – STAY

SRIDEV SHARMA Petitioner

Through: Mr. Aditya Kumar, with Mr.
Yash Kotak, Advs.

versus

ANUPAM MATHUR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

C.R.P. 378/2023

1. None appeared for the respondent despite advance notice. However, since the present Civil Revision raises a pure question of law, the same can be conveniently disposed of without hearing the respondent party.

2. The petitioner, who is the defendant in the Civil Suit bearing CS No. 92/2019 titled as 'Anupam Mathur v. Sridev Sharma', has filed the present Civil Revision under Section 115 of the Code of Civil Procedure, 1908¹ assailing order dated 13.09.2023 passed by the learned Civil Judge-01 (South) Saket Courts, New Delhi², whereby his application under Order VII Rule 11 of the CPC was dismissed.

3. Shorn of unnecessary details, the respondent/plaintiff has instituted a suit for recovery of Rs.2,56,144/- with interest @ 12% per

¹ CPC



annum from 13.10.2016 till realization against the petitioner/defendant. The cause of action of the respondent/plaintiff is that the petitioner/defendant had been dealing with him for purchase of Air Tickets and Hotel Bookings, against which certain invoices had been raised from time to time and although part payment was made, some remained unpaid and in this regard statement of accounts for the period 01.04.2016 to 31.03.2017 has been relied upon.

4. The petitioner/defendant moved an application under Order VII Rule 11 of the CPC claiming that the suit is not maintainable as there is no privity of contract between the plaintiff and the defendant; and that the suit is without any cause of action since there is not even a single document which would remotely suggest that the petitioner/defendant had availed any services from the respondent/plaintiff and was liable to pay any amount.

5. Learned Civil Judge quoted the provisions of Order VII Rule 11 of the CPC and referred to the decisions in **Saleem Bhai v. State of Maharashtra**³, **Liver Lierpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success & Anr.**⁴ and **Vijay Pratap Singh v. Dukh Haran Nath Singh**⁵ and dismissed the application. It would be relevant to extract the operative portion of the impugned order, which reads as follows:

“14. Coming to case at hand, the defendant have asserted that plain reading of statement of accounts for the period from 1st April, 2016 upto 31st March, 2017 and various invoices relied upon by the

² Civil Judge

³ (2003) 1 SCC 557

⁴ Civil Appeal No. 5665/2002

⁵ AIR 1962 SC 941



plaintiff reveals that air tickets and hotels bookings were done by the plaintiff in the name of a third person unknown to the defendant and thus the plaintiff's own documents speaks contradictory to his pleadings. Ld. Counsel for defendant contended that the contents of the plaintiff's documents do not support the version of the plaintiff in as much as the case being set up by the plaintiff is that the defendant was purchasing the air tickets for himself and for his own use, however, the invoices clearly shows that air tickets are not in the name of defendant but in the name of third person. As such, it is contended that the plaintiff does not disclose a cause of action against the defendant as plaintiff's own documents belies his case.

15. In the opinion of the court, the argument of the defendant that the case being set up by the plaintiff is that the defendant was purchasing air tickets from him for himself and for his own use is misplaced as the plaintiff has nowhere averred in his plaint that the defendant has been purchasing the air tickets and making hotel bookings only for himself and for his personal use. Though, it cannot be disputed that the plaint alone does not clearly reveal if the air tickets and hotels bookings were done by the plaintiff for defendant himself or for third person on behalf and at behest of the defendant. However, on combined reading of plaint and the documents relied by the plaintiff, the suit emerges to be that the defendant had purchased few air tickets and made some hotel reservation with the plaintiff in the name of third person and that is why the plaintiff has raised the invoices against the defendant. The court is of the opinion that neither the plaint nor the documents can be read in isolation and the case of the plaintiff has to be construed on joint reading of the plaint and the documents. The averments of the plaint and the contents of the documents are not contrary to each other but in furtherance and support of each other. Further, it is trite law that absence of some particulars is distinct from absence of cause of action.

16. In this regard, court deems fit to refer to judgment of Hon'ble Supreme court in *Mohan Rawale vs Damodar Tatyaba Supl.* (3) 850 1994 SCC (2) 392 wherein it has been observed as follows:

"A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses



no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars”.

17. Further, in the judgment of Hon’ble Supreme Court of India in *Syed Dastagir v. T.R. Gopalakrishna Setty (1999) 6 SCC 337*, it has been held as follows:

“9. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one’s case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded.”

18. The apex court in *Syed Dastagir (supra)* has held that as long as the court is able to gather cause of action from no so happily worded plaint, the pleadings of the plaintiff are required to be tested on the anvil of the trial and the plaint can not be thrown out at the threshold. The averments of the plaint and the contents of the documents are in consonance with each other and in fact the documents of the plaintiff have been able to plug the loopholes and fills the gaps of the plaint. Further, as far as the defence of the defendant that invoices of the plaintiff demonstrate no privity of contract between himself and the plaintiff is concerned, the court is of the opinion that same is matter of trial and cannot be looked into at this stage.

19. Thus, only once the evidence is led by the both the sides. the court shall have opportunity to address the objections and contention of the defendants. At this stage, it cannot be said that the plaint fails to disclose a cause of action against the defendants. Hence, averments in the plaint in my view, clearly demonstrate cause of action in favour of the plaintiff and against the defendants. In view of the aforesaid discussion and reasons as well as taking into account the principles and underlying object of order VII Rule 11 CPC, *the application of the defendant is dismissed as being devoid of merits and is disposed of accordingly*. No order as to cost.”



6. During the course of arguments learned counsel for the petitioner/defendant has vehemently urged that there is no written agreement so as to suggest that the petitioner/defendant placed any orders on behalf of other clients for purchase of air tickets and hotel bookings. It was vehemently urged that the respondent/plaintiff has not relied on any written authorization either so as to suggest that any air tickets and/or hotels booked for any clients were done on his behalf by the petitioner/defendant. It would be pertinent to refer to relevant paragraphs of the plaint, which read as under:

“2. That the defendant has been dealing with the plaintiff since long and has been purchasing the Air Ticket from the plaintiff against which the plaintiff had been sending the various bills, for the purchase so made.

3. That initially the defendant has making the payment of bill pertaining the air ticket purchased by the defendant, however thereafter the defendant stopped making the payment and as per the statement of account being maintained by the plaintiff, there is till an outstanding due amount of Rs. 2,04,919/- as on dated 13.10.2016. The Copy of statement of account of the defendant is annexed herewith as ANNEXURE-A.

4. That the defendant purchased the Air Ticket and instructed to the plaintiff for some Air Ticket deliver to the defendant at L-1/7, First Floor, Hauz Khas Enclave, New Delhi. All the air tickets delivered through representative and Email.

5. That the plaintiff had been sent the air ticket to the defendant under the assurance that the payment will be made immediately on raising the relevant bills. The copy of bill is annexed herewith is annexed herewith as ANNEXURE-B.”

7. A careful perusal of the aforesaid pleadings, read as a whole, would *prima facie* demonstrate that the plaintiff has disclosed a tenable cause of action that by virtue of an oral arrangement the respondent/plaintiff had been rendering services to the petitioner/defendant and raising invoices accordingly. Even a bare



perusal of the 'statement of account' relied upon by the respondent/plaintiff, would show that during the period 01.04.2016 to 31.03.2017 certain air tickets & hotel bookings were made so much so that payment was made on account by the petitioner/defendant on 04.11.2016 in cash to the tune of Rs. 2,50,000/- but after 13.06.2016 no payments had been recorded.

8. Without further ado, learned Civil Judge has rightly concluded that in considering the application under Order VII Rule 11 of the CPC, the Court cannot travel beyond the pleadings as contained in the plaint besides documents relied upon, and the Court cannot look into the defence being put forth by the petitioner/defendant. The long and short of the aforesaid discussion is that the defence put forth by the petitioner/defendant that there was no privity of contract between the parties and no bookings had been done on his behest by the respondent/plaintiff is a matter of trial.

9. In view of the foregoing discussion, this Court finds that there no illegality, infirmity or perversity committed by the learned Civil Judge in passing the impugned order.

10. Accordingly, the present Civil Revision Petition is dismissed.

11. The pending application also stands disposed of.

12. A copy of this Judgment be sent to the learned trial Court for information and records.

DHARMESH SHARMA, J.

JANUARY 05, 2024

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