



\$~16

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

+ **C.R.P. 38/2024 & CM APPL. 5939/2024**

PARVEEN BALA

..... Petitioner

Through: Mr. Gurmukh Singh Arora and
Mr. Vansh Bajaj, Advs.

versus

BHIMSEN MEHTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

11.03.2024

%

1. No one is present for the respondent even today. The matter was earlier listed before this Court for hearing on 06.02.2024. The learned counsel for the petitioner submits that he has already filed certain documents in respect of the complaint filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005¹. However, the documents are not on the record. Hard copies have been placed for perusal of the Court, which be kept on the record.

2. The petitioner is assailing the impugned order dated 13.09.2023 passed by the learned ADJ-06, West District, Tis Hazari Courts, Delhi, whereby her application under Order VII Rule 11 of the Code of Civil Procedure, 1908² was dismissed.

¹ PWDV Act



3. Shorn off unnecessary details, the respondent/plaintiff has filed a suit claiming himself to be the owner of the first, second and third floor of the property bearing No. 48/26, Street No.9, Near Kamal Hotel, Nai Basti, Anand Parvat, Delhi-110005, stating that the said property had been purchased by him by virtue of sale documents in the nature of Agreement to Sell, General Power of Attorney (GPA), affidavit, Will, receipt, etc., all dated 29.04.2002. He claims that some time in the year 1992, the petitioner/defendant who was having certain marital disputes with her husband, came in his contact and requested him to assist in the matrimonial litigation against her husband; and that after 29.04.2002 when he had bought the aforesaid property, he allowed the petitioner/defendant along with her son to reside on the second floor of the said property, on a license basis without charging anything from her on account of rent or otherwise.

4. Apparently, on a refusal to vacate the premises, presently the respondent/plaintiff has filed a suit for mandatory injunction, recovery of possession, damages, mesne profit etc.

5. The petitioner moved an application under Order VII Rule 11 CPC. The main plank of the argument being that there is no cause of action in favour of the respondent/plaintiff and that the suit is barred by limitation in view of Article 65 Schedule I of the Limitation Act, 1963, which prescribes a limitation of 12 years for filing of a suit for possession of an immovable property; and *inter-alia* she has also claimed adverse possession in the suit property by virtue of Section 27 of the Limitation Act. The said application came to be dismissed by the learned Trial Court assigning the following reasons:-

“5. Order VII Rule 11 provides that the Court shall reject a

² CPC



plaint where it does not disclose a cause of action. Cause of Action has been mentioned under a lot of provisions in the Code of Civil Procedure. It is a set of allegations or facts which make up for the ground of filing a civil suit in the Court. The litigants may pursue the option of seeking rejection of a plaint at the threshold, if the suit fails to disclose a valid cause of action; or is barred by any law; or if the reliefs prayed for therein are defective and un-remediable, in line with the provisions of O7 R 11. However, litigants ought to be mindful that in exercising such a power, the court cannot go into the merits of the case and has to make its determination only from a scrutiny of the averments made out in the plaint, which is presumed to be true. Additionally, the courts are also required to exercise this power with restraint. Plaints providing a prima facie cause of action are not to be simply rejected at the threshold. The decision of using the option provided under 0.7 R.11 CPC should therefore be taken with due consideration of the facts and circumstances.

6. It is settled proposition of law that the defense of the defendant cannot be looked into while considering an application under Order VII Rule 11 of C.P.C. and the Court has to consider the entire allegations made in the plaint and come to conclusion whether the plaint is barred by any law and discloses any cause of action for the suit.

7. The law declared by various Hon'ble High Courts is that Order VII Rule 11 of C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII Code of Civil Procedure, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant to decide the application filed under Order VII Rule 11 of C.P.C.

8. By way of the present application, the applicant-defendant is laying stress on the merits of the case by stating that he is in adverse possession of the suit property and suit of the plaintiff is barred by limitation and lac of cause of action, which facts needs to be proved by way of evidence by the parties. Of course, the plaintiff will have to prove its case in the present suit through cogent evidence. The applicant-defendant is definitely entitled to contest the suit on merits and will be given fair opportunity in view of the 'due process of law' to pursue his defense and to adduce his evidence. However, at this very stage the application of the defendant does not make out any ground for the plaint to be rejected under Order VII Rule 11 CPC.

9. In view of the above observations/discussions, the application of the defendant under Order VII Rule 11 CPC is thus dismissed.

10. Nothing in the present order shall be deemed or



construed as any expression of opinion or observation by us at the final hearing of the suit which naturally will have to be decided on its own merits.”

6. Assailing the aforesaid order, learned counsel for the petitioner has reiterated that the suit is hopelessly barred by limitation. It was also urged that the respondent/plaintiff is not even the owner of the premises since the sale documents referred to by him cannot be the foundation of his claim.

7. Having heard the learned counsel for the petitioner and on perusal of the record, this Court finds that the present civil revision petition is bereft of any merits at this stage.

8. As per the documents which have been shown today, it appears that the petitioner instituted a complaint under Section 12 of the PWDV Act on 27.03.2018 wherein she claimed that after leaving the company of her husband in the month of April 1993, she came in contact with the respondent/plaintiff, who concealed from her that he was already married having three children and she *inter-alia* claimed that she along with the respondent/plaintiff purchased the suit property, but the respondent/plaintiff with *mala-fide* intention got the documents of the sale executed in his name. She claimed that the respondent/plaintiff had been living with her intermittently and began to force her to vacate the premises sometime in 2015 or else he threatened to kill her and her son, if she failed to do so.

9. It is borne out from the record that the suit has been filed by the respondent/plaintiff on 02.01.2023. At this stage of the case, on a meaningful perusal of the pleadings/averments in the plaint filed by the respondent/plaintiff, it is difficult to discern that the suit is barred by limitation, as claimed by the petitioner. In the peculiar facts and



circumstances of the case, the issue of limitation becomes a mixed question of law and fact, which cannot be decided without recording of evidence. Lastly, the plea of the petitioner that she had also contributed funds or invested towards the purchase of the property and that she has since become the owner by way of adverse possession cannot be concluded at this stage of the case as the same would amount to travelling beyond the pleadings and the averments made in the plaint and looking into her defence, which exercise cannot be done at this stage.

10. In view of the foregoing discussion, this Court finds no illegality, perversity or incorrect approach adopted by the learned Trial Court in dismissing the application under Order VII Rule 11 CPC vide order dated 13.09.2023. The present civil revision petition is dismissed. The pending application is also disposed of.

11. This order is passed without prejudice to the rights and contentions of the parties. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

MARCH 11, 2024

sp