

D/L
Item No. 45
10.09.2025
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CO 3307 of 2025

**UGRO Capital Limited
-Vs.-
Grinearth Realcon Pvt. Ltd. & Ors.**

*Mr. Paritosh Sinha,
Mr. A. Mitter,
Mr. A. Banerjee,
Mr. U. Sengupta,
Ms. Debjani Sengupta,
Mr. N. Agarwal,*

...for the petitioner.

Mr. Arabinda Chatterjee, Sr. Adv.

...for the opposite party.

This application under Article 227 of the Constitution of India is at the instance of the defendant no 3 and is directed against an order being No. 14 dated July 10, 2025 passed by the Learned Civil Judge, Junior Division, 1st Court at Uluberia, Howrah in Title Suit No. 576 of 2023. By the impugned order the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

Mr. Banerjee, learned Advocate appearing for the petitioner submits that the plaint fails to disclose a cause of action. He submits that it is the specific case of the plaintiffs/opposite parties that the deed of conveyance was executed upon payment of part consideration and alleging failure on the part of the defendant no. 1 to pay the balance consideration money, the suit was filed praying for declaration that the deed of conveyance is null and void, has no binding effect and is liable to be cancelled and for other consequential reliefs. By referring to Section 54 of the Transfer of Property

Act, Mr. Banerjee submits that sale can be effected even upon payment of a part consideration money. Mr. Banerjee places reliance upon a decision of the Hon'ble Apex Court in the case of **Dahiben-vs.-Arvindbhai Kalyanji Bhanusali (Garga)**, reported in **(2020) 7 SCC 366**, in support of his contention that the alleged failure to pay the entire sale consideration cannot be a ground for cancellation of the sale deed and the plaintiffs may have other remedies in law for recovery of the balance consideration.

Mr. Chatterjee, Learned Senior Advocate appearing for the plaintiffs/opposite parties places reliance upon a decision of the Hon'ble Apex Court in the case of **Central Bank of India & Anr.-vs.-Smt. Prabha Jain & Ors.**, reported in **(2025) 4 SCC 38**, in support of this contention that the plaint cannot be rejected part.

After going through the plaint, this Court finds that it has been specifically stated by the plaintiffs/opposite parties that Aravinda Jyoti executed an undertaking on 11th February, 2022 and agreed and assured to take the possession of the suit property from the plaintiff on clearance of the cheques and on the basis of such assurance and undertaking of the said Aravinda Jyoti the plaintiff executed and registered the aforesaid deed of conveyance in favour of the Aravinda Jyoti and retained the possession of the suit property with itself.

Apart from praying for declaration that the deed of conveyance is null and void, inoperative and has no binding effect and is liable to be cancelled, the plaintiff has also prayed for permanent injunction restraining the defendants and their

men, agents and associates from disturbing the plaintiff with the peaceful possession of the suit property and further restraining the defendants from taking over possession of the suit property forcibly without due process of law.

Even if the contention of Mr. Banerjee is accepted that on the basis of the averments made in the plaint, the deed of conveyance could not have been declared to be null and void, but the fact remains that the plaintiff/opposite party has also claimed protection of its possession in respect of the suit property on the basis of an undertaking executed by Aravind Jyoti on 11th February, 2022, whereby he assured to take possession of the suit property on clearance of the cheques and on the basis of such assurance and undertaking the deed of conveyance was executed and the plaintiff retained possession of the suit property itself.

After reading the plaint as a whole, this court is of the considered view that the plaint discloses a cause of action. Whether the plaintiff will ultimately succeed in getting a decree would depend upon the defence case and the evidence that may be led by the respective parties at the time of trial. It is well settled that for the purpose of adjudicating an application under Order 7 Rule 11 of the Code of Civil Procedure only the averments made in the plaint are to be considered. It is equally well settled that the averments made in the plaint are to be treated as true and correct for the purpose of deciding the prayer for rejection of plaint.

After going through the application under Order 7 Rule 11 of the Code of Civil Procedure, this Court finds that the

defendants raised an objection as to the maintainability of the suit in view of the bar laid down under Section 34 of the SARFAESI Act, 2002. After going through the impugned order, this Court finds that the learned Trial Court has given elaborate reason as to why the plaint is not barred by the provisions of Section 34 of the SARFAESI Act, 2002. Such findings do not suffer from infirmity.

There is no quarrel to the proposition of law laid down in **Dahiben (supra)** that non-payment of the entire sale consideration could not be a ground for cancellation of the sale deed. In the facts of the said reported case, the Hon'ble Apex Court after going through the plaint observed that the suit filed by the plaintiff was vexatious, meritless and does not disclose a right to sue. The decision in the case of **Dahiben (supra)** is distinguishable on facts and cannot come to the aid of the petitioner in the case on hand as it has been observed hereinbefore that the plaint discloses a cause of action.

In **Prabha Jain (supra)**, the Hon'ble Apex Court observed that if the Civil Court is of the view that one relief is not barred by law, the plaint cannot be rejected partially. By applying the said proposition of law, this Court is of the view that the application under Order 7 Rule 11 of the Code of Civil Procedure was rightly rejected by the learned Trial Judge.

In view of the aforesaid observations, this Court is not inclined to interfere with the order impugned.

CO No. 3307 of 2025 stands dismissed.

It will be open to the petitioner to raise the issue of maintainability in its pleadings and if such an issue is raised,

the learned Trial Court shall frame an issue of maintainability of the suit in accordance with law.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Hiranmay Bhattacharyya, J.)