



2025:DHC:7511



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 15.07.2025***+ **C.R.P. 53/2025 & CM Appl. 9365/2025**

AMARJIT SINGH KOHLI

.....Petitioner

Through: Mr. Jugal Wadhwa, Mr. Rishabh
Wadhwa, Ms. Anjani Wadhwa, Advs.

versus

SANDEEP DHAWAN

.....Respondent

Through: Mr. Surjeet Singh, Adv.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugning the order dated 08.11.2024 [hereinafter referred to as "Impugned Order"] passed by the learned District Judge – 06, West District, Tis Hazari Courts, Delhi. By the Impugned Order, the Application filed by the Petitioner [Defendant before the learned Trial Court] under Order VII Rule 11 read with Section 151 of the CPC [hereinafter referred to as "Application"] has been dismissed by the learned Trial Court with a finding that it would be premature to reject plaint without a trial at this stage when the matter is already sub-judice.

2. The Impugned Order has been passed in Civil Suit No. 830/2021 captioned *Sandeep Dhawan v. Amarjit Singh Kohli*. The Impugned Order is in two parts – the first part deciding an Application under Order XXXIX Rule 1 and 2, CPC which was filed by the Respondent [Plaintiff before the



learned Trial Court] for restraining the defendants, from creating any third party interest or parting with possession or letting out or altering or mortgaging the suit property. The second part of the Impugned Order decides the Application and has been challenged before the Court.

3. Learned Counsel for the Petitioner [Defendant before the Trial Court] makes two submissions. Firstly, he submits that the Respondent [Plaintiff before the learned Trial Court] is the tenant of the Petitioner and that the tenant has filed this false suit against the Petitioner. Secondly, it is contended that the plaint does not disclose any cause of action.

3.1 Learned Counsel for the Petitioner/Defendant submits that the suit of the Respondent/Plaintiff is based on an oral agreement and that there is no written contract of sale and purchase between the parties. Thus, the suit as filed is not maintainable.

3.2 Learned Counsel for the Petitioner/Defendant has also relied upon a judgment passed by a Coordinate Bench of this Court in ***Irmeet Singh Kohli and Ors. v. Ashok Kumar Batra and Ors.***¹ to submit that in similar circumstances, the Application under Order VII Rule 11 of the CPC was allowed by this Court.

4. Learned Counsel for the Respondent/Plaintiff, on the other hand, submits that it is not denied that the predecessor-in-interest of the Respondent was the tenant of the Petitioner in the subject property. He submits that as stated in the plaint, from January, 2019 till July, 2019, the Petitioner/Defendant stopped taking rent for the subject property and

¹ MANU/DE/2857/2017



thereafter, with the help of some friends/well-wishers, a joint meeting was called at the house of the Petitioner/Defendant on 06.07.2019 wherein an agreement was reached between the parties that since the Respondent/Plaintiff had already paid some amounts to the Petitioner/Defendant, he was willing to pay an additional amount to execute a sale deed in respect of the tenanted shop.

4.1 It is further stated in the plaint that on 07.07.2019, an oral agreement was reached between the parties. The terms of the oral agreement have been set out in the plaint. It is thereafter stated in the plaint that pursuant to this oral agreement, the father of the Respondent/Plaintiff started making part payment of the sale consideration amount every month. A table is also set out in paragraph 8 of the plaint setting out the payments made, the amounts and the dates. The Plaint also sets out that after receiving substantial amounts of money, the Petitioner/Defendant has become dishonest and he is not performing his part of the contract leading to a legal notice being sent. Thus, a suit for specific performance has been filed.

5. It is settled law that in an Application under Order VII Rule 11 of the CPC, all that is required to be examined is the plaint along with the documents with the plaint. The Court is not required to entertain the defence of the Respondent. The first ground that has been taken by the Petitioner is that the case as set out in the plaint is false. This is not a ground as is envisaged under the provisions of Order VII Rule 11 of the CPC. It is apposite to set out Order VII Rule 11 of the CPC below:

11. Rejection of plaint— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;



(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

6. The Petitioner has contended that the plaint does not disclose any cause of action. A review of the plaint as above, discloses that the plaint has detailed cause of action.

6.1 The relevant portion of the plaint is set out below in this behalf:

“6 That next day i.e. on 07.07.2019, the plaintiff, his father; brother Shri Sumit Dhawan along with their friends/well-wisher namely Shri Vibhor Sahani and also Shri Ashok Kumar Sapra with his son namely Shri Arun Sapra and other friends/well-wishers visited the defendant and his wife at about evening hours. There in presence of all the persons, the defendant repeated his above mentioned proposal and the father of the plaintiff, as well as Shri Ashok Kumar Sapra accepted the same. After discussions, the terms of the contract were decided as under:-

a) The father of the plaintiff shall pay a total sum of Rs.35,00,000/- to the defendant within a total period of four years from the date of this Agreement. It was also agreed that the father of the plaintiff shall make monthly installment for the payments in addition to the rent of Rs.3000/- to the defendant. Initially the monthly installment shall be Rs.25,000/- per month which the father of the plaintiff shall enhance as per their convenience. It was also decided that for no reasons, the period of four years would be enhanced.

b) That as decided and since the defendant stopped taking the rent w.e.f.



01.01.2019, a rent receipt was executed wherein the defendant received Rs.21,000/- as rent for the period 01.01.2019 to 31.07.2019 and on the back of the same, the defendant received in his own handwriting an amount of Rs.1,75,000/- in cash.

c) That it was decided as and when the complete payment of Rs.35,00,000/- would be received by the defendant from the plaintiff's father, the defendant shall execute a registered Sale Deed of the above said shop/property in favour of the father of the plaintiff within two months of the receipt of the complete payment. It is clarified that since there were some family disputes between the family of the defendant involving the said property, the defendant assured that the same is on the verge of resolution and he would soon get the dispute resolved so as Soon as he would get the resolution, the defendant shall execute a written Agreement to Sell containing the terms of the contract. Till the time, the parties shall adhere to the terms of the contract as has been decided verbally in presence of all the persons present there.

d) It was also agreed that in case the father of the plaintiff would not be able to make the complete payment of Rs.35,00,000/-within the period of four years, then the payment already received by the defendant shall be forfeited and similarly if. the defendants fails to execute the registered Sale Deed after receipt of the full and final sale consideration of the said property, he would be liable to acquire similar kind of property in the same vicinity and transfer the ownership of the same. It was also decided that if for some genuine legal reason, the defendant could not transfer the said property or the alternative shop as decided, then the defendant is liable to pay the double of the consideration amount. It is clarified herein that the priority for the parties was the execution of the Sale Deed and not the money since the shop is under occupation of the plaintiff since long and place pivotal role for the plaintiff's side for their occupation.

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8. That in these circumstances, the plaintiff's father started making the part payments of the consideration amount every month and after the death of the father of the plaintiff on 15.12.2020, the plaintiff had been making the payment of the consideration amount. For the kind perusal of this Hon'ble Court, copies of the rent receipts are annexed herewith. The table herein below contains all the details of the said payment.

S. No.	Receipt Date	Period	Amount
1.	01.08.2021	01.08.2021 to 31.08.2021	Rs. 28,000/- (Cheque Rs. 3000/-, cash Rs. 25,000/-)
2.	01.07.2021	01.07.2021 to	Rs. 63,000/- (Cheque Rs. 3000/-, cash Rs.



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		31.07.2021	25,000/- previous balance Rs. 35,000/-)
3.	01.06.2021	01.04.2021 to 30.06.2021	Rs. 84,000/- (Cheque Rs. 9000/-, cash Rs. 75,000/-)
4.	01.03.2021	01.01.2021 to 31.03.2021	Rs. 84,000/- (Cheque Rs. 9000/-, cash Rs. 75,000/-)
5.	01.12.2020	01.11.2020 to 31.12.2020	Rs. 56,000/- (Cheque Rs. 6000/-, cash Rs.50,000/-)
6.	01.10.2020	01.10.2020 to 31.10.2020	Rs. 1,28,000/- (Cheque Rs. 3000/-, cash Rs. 25,000/- & previous balance Rs. 1,00,000/-)
7.	01.09.2020	01.04.2020 to 30.09.2020	Rs. 18,000/-
8.	01.03.2020	01.03.2020 to 31.03.2020	Rs. 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
9.	01.02.2020	01.02.2020 to 29.02.2020	Rs, 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
10.	01.01.2020	01.01.2020 to 31.01.2020	Rs, 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
11.	01.12.2019	01.12.2019 to 31.12.2019	Rs, 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
12.	01.11.2019	01.11.2019 to 30.11.2019	Rs, 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
13.	08.10.2019	01.10.2019 to 31.10.2019	Rs, 28,000/- (Cheque Rs. 3000/-, cash Rs.



			25000/-)
14.	03.09.2019	01.09.2019 to 30.09.2019	Rs. 28,000/- (Cheque Rs. 3000/-, cash Rs. 25000/-)
15.	04.08.2019	01.08.2019 to 31.08.2019	Rs. 1,03,000/- (Cheque Rs. 3000/-, cash Rs. 75,000/- + Rs. 25,000/-)
16.	07.07.2019	01.01.2019 to 31.07.2019	Rs. 1,96,000/- (rent Rs. 21,000/-, cash Rs. 1,75,000/-)"

[Emphasis Supplied]

6.2 The plaint further sets out that eviction proceedings have also been filed by the Petitioner/Defendant against the Respondent/Plaintiff wherein these facts have also been disclosed by the Respondent/Plaintiff. The Plaint also sets out that after receiving substantial amounts of money, the Petitioner/Defendant has become dishonest and he is not performing his part of the contract leading to a legal notice being sent. Thus, a suit for specific performance has been filed. Paragraphs 11 to 14 and 17 of the plaint are set out below:

“11. That in the entire Eviction Petition, the defendant miserably failed to apprise the correct facts before the. Ld. ARC and has even suppressed the factum of receiving the substantial sum of Rs. 8,60,000/- as part consideration amount.

12 That the above mentioned facts and circumstances clearly demonstrates that the plaintiff had always been ready and willing to perform its part of contract which is also evident from the fact that he had been regularly making the part consideration amount as agreed between the parties. But on the other hand, the defendant got dishonest and just to ridicule and avoid the contract, has initiated the above mentioned eviction petition. Hence, this is a fit case where this Hon'ble, Court passes necessary directions and orders for the specific performance of the contract.



13. That in these circumstances, the plaintiff was constrained to send a legal notice to the defendant to come forward and perform its part of the contract but the defendant miserably failed to adhere to the legal demands as mentioned in the said legal notice.

14. That the above said contentions made by the plaintiff are sufficient for this Hon'ble Court to grant the relief of Specific Performance thereby directing the defendant to execute the Sale Deed with respect to the suit property Shop i.e. a middle shop on the ground floor of property No.H-25, Main Market, Rajouri Garden, New Delhi-110027. For any reasons if this Hon'ble Court comes to the conclusion that the specific performance cannot be granted then in such like eventuality, this Hon'ble Court may graciously consider the contentions for the alternative prayer.

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17. That the cause of action for filing the present suit arose in 1968 when the father of the plaintiff was incorporated as a tenant. The cause of action further arose in January, 2019 when the defendant stopped taking the rent of the premises. The cause of action further arose on 06.07.2019 and also on 07.07.2019 when the parties had the meeting in presence of relatives, friends and well-wishers and the Agreement for Sell and Purchase of the property was finalized. The cause of action further arose on each occasion when the defendant received the rent amount as well as the installments towards the consideration amount. The cause of action further arose in favour of the plaintiff and against the defendant when the defendant got dishonest and to avoid the Agreement, initiated false and frivolous Eviction Petition against the plaintiff. The cause of action is still subsist and continue as till date the defendants have failed to comply with the terms and conditions of the above said settlement.

[Emphasis Supplied]

7. The Respondent/Plaintiff has filed a suit for specific Performance of an Agreement to Sell and Performance for a decree of specific performance of Agreement to Sell dated 07.07.2019 executed between the parties *qua* suit property being F-190, Vikaspuri, New Delhi-110018. The plaint also sets out alternate prayers. It is the case of the Respondent/Plaintiff in the plaint that the Respondent/Plaintiff has paid Rs.35 lacs over a period of four years to the Petitioner/Defendant for the purchase of the suit property, however the Petitioner/Defendant has refused to execute the Sale Deed. It is settled law that the Court has to read the entire plaint as a whole to find out whether



it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the CPC.

7.1 Whether the plaint discloses a cause of action is essentially a question of fact which is determined on the basis of averments made in the plaint in its entirety taking those averments to be correct. Therefore, to set out a cause of action in a plaint, only material facts are required to be stated and not the evidence *per se* except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. While assessing whether a plaint discloses a cause of action, the Court is only required to examine whether the cause of action is such which necessitates determination by the Court and not whether the plaintiff will actually succeed in the suit or not. This position of law has been crystallised by the Supreme Court in *Mayar (H.K.) Ltd. & Ors. v. Owners & Parties, Vessel M.V. Fortune Express & Ors.*², the relevant extract of which is set out herein below:

*“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. **The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.** In the present case, the averments made in the plaint, as has*

² (2006) 3 SCC 100



been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

[Emphasis Supplied]

8. So far as concerns the averments that there is no agreement between the parties, the plaint does set out an oral agreement. Whether or not this agreement will pass the muster of trial can only be determined once evidence is led by both the parties. In any event, this would be a ground of defence which is not amenable for adjudication at the stage of an Application under Order VII Rule 11 of the CPC.

9. The Petitioner has relied upon the judgment in the case of ***Irmeet Singh Kohli*** case to contend that the Application ought to be allowed. The ***Irmeet Singh Kohli*** case is distinguishable on facts and the judgment premises itself on a Petition that is barred by limitation. The relevant extract of the judgment is set out below:

“2. Brief relevant facts are that the respondents/plaintiffs have filed a suit for specific performance and injunction on 18.08.2011. As per the suit, it is claimed that sometimes in November, 1984 the respondents/plaintiffs sought physical possession of the suit property being 3rd Floor, Flat No.3, formerly known as Scindia House, Connaught Place, Janpath, New Delhi and now known as Atma Ram Properties Pvt. Ltd. It is urged that they got physical possession based on an oral agreement to sell between the parties. It is urged that the petitioners/defendants purchased the said property on 14.06.1984 and intended to sell the same property. Hence, in the presence of a common friend Sh. Manmohan Khanna, the deal was finalised in the month of December, 1984 for a total sum of Rs.10 lacs. A sum of Rs.7.50 lacs was paid to the petitioners as part payment. There is no plea of any receipt being executed as evidence of payment of the said amount. The balance Rs.2.50 lacs was to be paid at the time of execution of the sale documents. It is further urged that agreement to sell and other title documents could not be executed at that time since petitioner Nos.2 to 5(defendants No.2 to 5) who also had title qua the suit property, were minors and it was represented by father of respondent No.2 Sh. Balbir Singh that a petition filed by the petitioners was pending disposal before the



District Judge, Delhi seeking permission to sell the property on behalf of the minors. It is stated that the respondents thereafter kept on inquiring from Sh. Balbir Singh about the fate of the petition pending in the court of District Judge. It is further stated that the petitioner Sh. Balbir Singh purported to execute a lease deed in December, 1984 (29.12.1984). Though the instrument was executed as lease deed but as per the stipulations contained therein, the respondents/plaintiffs can use and enjoy the premises as owner thereof. The lease deed provides power to sub-let and that the tenancy cannot be terminated. It also purports to put an obligation to pay rent of Rs.2,500/- per month on the respondents because a sum of Rs.2.50 lacs remained outstanding. The sum of Rs. 2,500/- which was though described as rent was actually interest payable by the respondents for the outstanding dues. It is further urged that somewhere in the year 2007, the petitioners suddenly stopped receiving the said payment of Rs.2,500/- per month. It is further urged that the respondents were shocked when pursuant to a summon received from the Additional Rent Controller, they learnt that the petitioners had filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). It was on receipt of a copy of the eviction petition, it is claimed that the respondents came to know that the petitioners are trying to wriggle out of the contractual obligation of executing the sale deed of the property in favour of the respondent.

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15. It is manifest from the averments in the plaint that the respondents have waited about 27 years from the date of alleged agreement to sell to file a suit for specific performance claiming that the refusal to execute a sale deed by the petitioners has arisen in the year 2011 when the eviction petition was filed by the petitioners. It is quite clear that the suit is hopelessly barred by limitation on a meaningful reading of the plaint only and was liable to be dismissed on this ground by the trial court. Order VII Rule 11 permits dismissal of a plaint which is on the face of it barred by any law.

[Emphasis supplied]

9.1 The cause of action stated to have arisen in the present plaint has arisen in 2019, while the suit has been filed on 18.11.2021. Thus, the plaint is within limitation. In any event, no challenge on the aspect of limitation has been made by the Petitioner in the Application.

10. In view of the foregoing discussions, this Court finds no infirmity



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with the Impugned Order. The Petition is accordingly dismissed. The pending Application also stands closed.

11. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 15, 2025/r/pa