



2025:DHC:4970



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

% ***Date of Decision: 28.05.2025***

+ **C.R.P. 69/2025 & CM APPL. 13034-13035/2025**

DINESH @ SINTU & ANR.

.....Petitioners

Through: Mr. Arun Vidyarthi and Mr. Kuldeep,
Advocates.

versus

SUNITA & ANR.

.....Respondents

Through: Mr. Shanul Kadian & Mr. Rahul
Kadian, Advocates for R-1.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 13034/2025 [Condonation of delay]

1. This is an Application filed on behalf of the Petitioners seeking condonation of delay of 5 days in filing the present Petition.
2. For the reasons as stated in the Application, the delay is condoned.
3. The Application stands disposed of.

C.R.P. 69/2025 & CM APPL. 13035/2025 [Stay]

4. The present Petition has been filed on behalf of the Petitioners under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 14.11.2024 passed by learned District Judge-01, North, Rohini Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioners has been dismissed by the learned Trial



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Court.

5. Learned Counsel for the Petitioners raises two challenges in the present Petition. Firstly, it is submitted that there is no cause of action. Secondly, it is submitted that the suit is barred for deficient Court fee.

6. So far as concerns the plea that there is no cause of action, a perusal of the Plaint shows that the Suit has been filed for possession and permanent and mandatory injunction. It is the case the Respondent No.1/Plaintiff that the subject property belongs to the family of the Respondent No.2 and that it was partitioned amongst his family members and was subsequently sold to Respondent No.1/Plaintiff. The Plaint further states that when the subject property was purchased by the Respondent No.1/Plaintiff, it was in physical possession of the Defendant No.3 (Respondent No.2 before this Court) and it was covered with a boundary wall of about 4 ft. in height and two shops with shutter.

6.1 The Plaint further sets out that on 03.07.2023, the Petitioners/Defendants started demolishing the shops. The written complaint was thereafter also made by the Respondent No.1/Plaintiff. The Respondent No.1/Plaintiff in the Plaint further stated that she had filed various complaints and spoke to the Police and the authorities, however, the illegal construction over the subject property has continued. It is apposite to extract the relevant parts of the Plaint, which are set out below:

“6. That when the property was purchased by the plaintiff, it was in physical possession of the defendant no-3 and covered with boundary wall about 4" in height and two shops with shutter in depleted condition. The site plan of the property is annexed herewith is as Annexure-C.

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8. That on 03.07.23 the plaintiff came to know that the defendant no-1 and-2 in order to encroach and take illegal possession over the suit property started demolishing the wall as well as shops and picking up the debris of the property, she immediately contacted them and raised the objection on their illegal and unwarranted act but they did not pay any heed on her request and extended the threat of life therefore she made a call to the police at 112, PCR, that came and restrained the work and directed to the defendants no.1 and 2 to reach the police station but they did not come to the police station rather the plaintiff reached the police station Badli, with a written complaint and lodged a complaint vide DD No. 134 dated 03/07/2023 through defendant no.3 but the police has not taken any action against the defendants no.1 & 2. The copy of complaint vide DD no 134 dated 03.07.23 is annexed herewith as Annexure D.

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11. That the defendant no-3 got the aforesaid suit property in oral family partition as such the suit property is self acquired property of the defendant no-3 and being owner in possession of the property, he had every right to dispose of the same according to his own wish. The defendant no -1 and 2 have no legal right, title and interest in the suit property and they can't take the illegal possession and construction over the suit property.

12. That the plaintiff has again moved the written complaint to the police against the illegal and unauthorized construction over the suit property on 18.07.23 but neither the police took any action against the defendant no-1 and 2 and neither the defendants no 1 and 2 stopped the construction on the suit property therefore the plaintiff has no other option except to approach this Hon'ble Court and file the present suit.

13. That the cause of action arose in favour of the plaintiff and against the defendants after 5.07.23 when the defendant no-3 executed the aforesaid documents in favour of the plaintiff and further cause of action arose on 10.6.23, 14.06.23, 16.06.23 and 29.06.23 when the defendant no 1 and 2 extended the threat to face the dire consequence in life and the cause of action further arose on 03/07/2023, when they started demolishing the wall as well shops and picking up the debris from the suit property and made the written complaint by the defendant no-3 in the police station and further cause of action arose on 04.07.23 when the defendant no 1 and 2 along with their anti-social person started illegal construction over the suit property and despite calling them by police personal in the police station they did not go to the police station and kept on continued illegal construction over the suit property and the cause of action further arose on 18.07.23 when the plaintiff again made a written complaint against the defendant no-1 and 2 to the



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police station Samaypur Badli to get the construction stop but despite the written complaint the police has not taken any action against the defendants and **the construction work is still continuing over the suit property without any legal right and interest in favour of the defendant no1 and 2 thus the cause of action is still continuing against** the defendants no.1 & 2, whereas defendant no.3 is being arrayed as performa [sic: proforma] party in present suit from whom the plaintiff has purchased the suit property.”

[Emphasis Supplied]

7. As can be seen from the above, the Plaint sets out a definitive cause of action. The Petitioners are unable to show the Court as to how the Suit does not have a cause of action except for stating what is set out in their defence. It is settled law that for the purposes of an examination under Order VII Rule 11 of the CPC, the defence of a party cannot be looked into.

7.1 The Supreme Court in the case of ***Shakti Bhog Food Industries Ltd. v. Central Bank of India and Anr.***¹, has held that the cause of action for filing a suit would consist of a bundle of facts and the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law for which invoking the provisions of Order VII Rule 11 CPC is ruled out. It has further been held that whether the plea taken by the Plaintiff is genuine or legitimate would be a mixed question of fact and law and which would require a response of the defendant. It is further held that the averments in the Written Statement in that behalf in an application under Order VII Rule 11 of CPC are wholly irrelevant for the prayers of rejection of the plaint. The relevant extract of the ***Shakti Bhog Food Industries*** case is reproduced below:

“8.....

11. This position was explained by this Court in *Saleem Bhai v. State of*

¹ (2020) 17 SCC 260



Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

*'9. A perusal of Order 7 Rule 11 CPC makes **it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint.** The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, **the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage,** therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'*

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, **what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments.** These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100]...

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22. **It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out.** In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the



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*appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. **Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.***

[Emphasis Supplied]

8. As stated above, a review of the plaint shows that it has been filed for possession, permission and mandatory injunction along with prayers for removal of debris etc. A clear and distinct cause of action exists. Thus, this ground of the Petitioners is without any merit.

9. So far as concerns the second ground under Order VII Rule 11 sub-Section (c) that no adequate Court fee has been paid, the same, from a plain reading of the provision, shows that the sub-Section is inapplicable. A plain reading of the provision provides that the provision is applicable in cases wherein the plaintiff, on being required by the Court to supply the requisite Court Fee within a time to be fixed by the Court, fails to do so. Order VII Rule 11(c) of the CPC is set out 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;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

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.”

[Emphasis Supplied]

9.1 It is undisputed by the parties that no order has been passed by the learned Trial Court which directs that adequate Court Fee has not been affixed or opportunity to make good the deficiency of Court Fee has been provided to the Respondent.

10. A Coordinate Bench of this Court in the case of ***Binu Anand Khanna v. Ratan Tata***², has held that if the Court comes to a conclusion that the plaintiff has not affixed requisite Court Fee, the Court has to grant an opportunity to the plaintiff to make up deficiency in Court Fee. The relevant extract of the ***Binu Anand*** case is reproduced below:

“5. What cannot be disputed is that the proposed amendment by the plaintiff no way changes the cause of action or the basic case pleaded by the plaintiff in its original plaint. Once there is no substantial change in the cause of action in the case originally pleaded by the plaintiff, the law of amendment has received very liberal construction in the recent years. All that the plaintiff wants to do, is to correct certain defects in the plaint which in any case would be irregularities and not illegality of any nature which would fatal to the suit of the plaintiff. Even if the Court was to come to the conclusion that plaintiff has not affixed requisite court fee, it has to grant an opportunity in accordance with proviso to Order 7 Rule 11(c) of the CPC granting an opportunity to the plaintiff to make up deficiency in court fee. So if the plaintiff wishes to correct the paragraph in relation to the relief claimed as well as the court fee payable in accordance with law at the very initial stage of the suit when even replication has not been filed as yet, it would neither be just and proper to deny the relief of amendment prayed for by the applicant/plaintiff.”

[Emphasis Supplied]

² MANU/DE/2976/2005



11. Clearly, no such order has been passed by the learned Trial Court which has not been complied with by the Respondent No.1/Plaintiff.

12. The examination by this Court under Section 115 of the CPC is limited.

12.1 The Supreme Court in *Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.*³, has held that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. The Supreme Court in *Ambadas Khanduji* case has held:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

13. Accordingly, and for the reasons as stated above, the Petition is dismissed. The pending Application also stands closed.

14. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this

³ (2017) 14 SCC 132



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behalf.

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

TARA VITASTA GANJU, J

MAY 28, 2025/ ha

Click here to check corrigendum, if any