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

+ **FAO 162/2020 and CM APPL. 20620/2020**

SHRI SHARAD SHARMA

.....Appellant

Through: Mr. Prateek Mohan Sinha, Ms.
Nadini Harun, Ms. Namita
Sinha & Mr. R Shree, Advs.

versus

SHRI YASHPAL SINGH JOSHA & ANR.Respondents

Through: Mr. Pradeep C, Mr. Rohitashav
Kamul & Mr. Parth Dhawan,
Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

28.04.2025

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1. Learned counsel for the appellant requests for an accommodation stating that the main counsel is not available.

2. Learned counsel for the respondents has opposed the request for adjournment and he has alluded to the order dated 21.11.2023 passed by this Court.

3. Having heard the learned counsel for the respondents and on perusal of the record, a short question arising in the present matter is as to whether the present appeal is maintainable in view of the fact that the impugned order dated 16.10.2019, which is assailed by way of the present appeal, rejected the plaint filed by the appellant/plaintiff under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

4. In a nutshell, it appears that a suit for specific performance was instituted by the appellant/plaintiff against the respondents in which

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16.12.2016. The learned Trial Court decided the aforesaid application and observed as under:-

“18. On the aspect of limitation, it was lastly the contention of plaintiffs counsel that limitation is a mixed question of law and facts and the same can be no ground to reject the plaint at the very threshold. In this regard, he relied on **Ramesh B, Desai Ors, Vs. Bipin Vadilal Mehta & Ors.**, (2006) 5 SCC 638, This argument holds no water. The plaint of the plaintiff is *ex facie* time barred on the basis of the statement made in the plaint itself without any further enquiry. When the bare reading of the plaint shows that the suit is *ex facie* time barred, without any further enquiry, then the Court will not hesitate to reject the plaint, To arrive at the question of limitation for the reliefs sought for by plaintiff Sharad, there is no need for recording of evidence in view of the admitted facts. In the plaint itself there are averments about the previous civil suit as also the eviction petition before Ld. ARC. In the plaint itself there are averments that consistently from the year 2000, defendant no.2 Ms. Krishna Chaudhary had been taking a stand completely contrary to that of the plaintiff, including that the documents dt. 29.05,1992 and dt. 13.07.1999 were sham, forged and fabricated.

19. The sum and substance of the aforesaid discussion is that the specific performance suit of the plaintiff Sharad Sharma, having been filed 15 years after he had notice of the refusal of performance on the part of defendant(s), is hopelessly time barred. For very similar reasons as aforesaid the other relief of damages of Rs. 38 lacs too is hopelessly time barred. In any event, the plaintiff has no basis to seek damages of Rs. 38 lacs from the defendant(s) inasmuch as his claim for specific performance has been turned down. Similarly, the plaintiff has no basis to seek protection from dispossession or to restrain defendant(s) from selling out the suit flat in the form of permanent injunction. This is more so when the plaintiff Sharad vide the judicial order dt. 29.10,2014 has been directed to vacate the suit flat. Further, a perpetual injunction decree can be issued in terms of section 38 of Specific Relief Act to prevent the breach of an obligation existing in plaintiff's favour. In the case at hand, the relief of specific performance having been turned down and the plaintiff having been directed to vacate, has no obligation in his favour qua the suit flat which can be breached.

20. Now comes the question of applicability of Order II Rule 2 of CPC, On this aspect, this Court is of the view that Order II Rule 2, CPC does not apply. The previous suit for permanent injunction and the present suit for specific performance are not identical. The causes of action for these two are separate. The reliefs/claims are governed by separate Articles of Limitation Act. The facts of the present case are somewhat identical to that of **Sucha Singh Sodhi**

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Vs, Baldev Raj Walla & Anr., (2018) 6 SCC 733. In **Sucha Singh Sodhi** (supra) the first suit was for permanent injunction to restrain defendant from interfering in plaintiff's possession. The second suit was for specific performance. It was held that Order II Rule 2, CPC did not bar the second suit for specific performance.

21. Now comes the question of *res judicata*. In the eviction petition before Ld. ARC, the aspect of specific performance of the two agreement(s) were not directly and substantially in issue. In any event, a Rent Controller cannot entertain a *lis* for specific performance or for damages or for permanent injunction. In all fairness, during the course of arguments, Ld. Counsel for defendant no. 2 had stated that he did not press the ground of *res judicata*.

22. To conclude, the plaint of the plaintiff Sharad Sharma stands rejected.”

5. In view of the above, it is clear that the suit instituted by the appellant/plaintiff was rejected by the learned Trial Court. As per Section 2(2) of the CPC, a decree is defined as under:-

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;

6. A bare perusal of the aforesaid provision would show that an order envisaging the rejection of a plaint is also deemed to be a decree.

7. That being the case, the present appeal is not maintainable. Accordingly, this appeal is hereby dismissed

~~without~~ without prejudice. The time spent by the appellant/plaintiff

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prosecuting the present proceedings shall be excluded by virtue of Section 14 of the Limitation Act, 1963. It is ordered accordingly.

DHARMESH SHARMA, J.

APRIL 28, 2025
Ch/Es

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