



2025:DHC:5401



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 01.07.2025***+ **C.R.P. 181/2025 & CM APPL. 37234-37236/2025**

AKASHDEEP MATHUR & ANR.Petitioners

Through: Mr. Lalit Mathur & Mr. Rahul
Shankar, Advocates.

versus

SHAIFALI MATHURRespondent

Through:

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 37234/2025 /*Condonation of delay in filing***

1. This is an Application filed on behalf of the Petitioners seeking condonation of delay of 2 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.

CM APPL. 37236/2025 /*Condonation of delay in re-filing*

4. This is an Application filed on behalf of the Petitioners seeking condonation of delay of 52 days in re-filing the present Petition.
5. Learned Counsel for the Petitioners submits that although not set out in the Application, the mother-in-law of the Petitioners was suffering from cancer and because of which the delay in re-filing has arisen. Learned Counsel submits that a lenient view be taken in view thereof. Accordingly,



and for the reasons stated above, the delay is condoned.

6. The Application stands disposed of.

CM APPL. 37235/2025 [Exemption from filing certified copies]

7. Allowed, subject to just exceptions.

8. The Application stands disposed of.

C.R.P. 181/2025

9. 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 05.12.2024 passed by learned Additional District Judge-01, East District, Karkardooma Courts, Delhi [hereinafter referred to as “Impugned Order”].

10. The Impugned Order is a composite order which decides an Application under Order VII Rule 11 of the CPC filed by the Petitioners (Defendant Nos.1 and 2 before the learned Trial Court) as well as an Application under Order VI Rule 17 of the CPC filed by the Respondent (Plaintiff before the learned Trial Court).

10.1 The Impugned Order also sets out that the bar of jurisdiction under Section 132 (1) (c) read with Section 70 of the Delhi Cooperative Society Act, 2003 [hereinafter referred to as the “DCS Act”] has also been argued by the Petitioners, even though there is no mention of the same in the Application. In any event, the Impugned Order has discussed the provision and found that the jurisdiction of the Civil Courts is only barred with respect to disputes touching the constitution, management and business of a cooperative society and has, thus, held that the bar is not applicable in the case of suit for partition.



11. The challenge in the present Petition is restricted by the learned Counsel for the Petitioners to the order dismissing the Application under Order VII Rule 11 of the CPC [hereinafter referred to as the “Application”].

12. The ground as taken by the Petitioners/Defendants in the Application is that the Plaint is not only barred by law but does not disclose any cause of action. It is apposite to extract paragraph 5 of the Application below:

*“5. That if that being the case of the plaintiff then the present suit under the provision of Civil procedure Code cannot surely be maintainable as having **not only being barred by law but also having disclosing no cause of action to sue the defendant under the provision of the said act as the** plaintiff cannot claimed 50 % of the total suit property as late Sh. Ram Bihari Mathur was only 50 % share owner of the said property and the partition of only that much part of the suit property can be prayed for and as such no cause of action arose against the defendants No 1 & 2 and in favour of plaintiff.”*

[Emphasis supplied]

12.1 The Application however does not set out which law the plaint is barred by.

13. In Reply to the Application, the Respondent/Plaintiff has contended that the Plaint is maintainable as the Respondent/Plaintiff is a sibling of the Petitioner No.1 (Defendant No.1 before the learned Trial Court) and that the suit filed is a suit for partition.

14. Learned Counsel for the Petitioners submits that in view of the conveyance deed which is filed along with the Plaint, the Respondent/Plaintiff is not entitled to any rights in the suit property.

15. A perusal of the Plaint shows that the Plaint has been filed by the Respondent/Plaintiff seeking rights in the suit property of her father/Mr. Ram Bihari Mathur, in favour of whom the Conveyance Deed was executed. It is stated therein that cause of action arose on 20.01.2022 when the Petitioner/Defendant No.1 refused to transfer the share of the Plaintiff in the



suit property to the Plaintiff. It further arose on 03.05.2022 when the Petitioner No.1/Defendant No.1 in his reply to the legal notice sent by the Plaintiff, denied the right of the Plaintiff in the suit Property.

15.1 The relevant extract of the plaint reflecting a cause of action is set out below:

“4. That the facts of the case are that the plaintiff and defendant no. 1 are Class I heirs of Mr Ram Behari Mathur. The said property was transferred in favour of Mr. Ram Behari Mathur and Mr. Akashdeep Mathur by Ms. Saraswat through a Conveyance deed dated 10.09.2003.

5. At the time of execution of conveyance deed of the above said property it was decided between the plaintiff, defendant no.1 and their father (Mr Ram Behari Mathur) by an oral agreement that the property shall be equally divided between Plaintiff and Defendant No.1 after their father's demise and he will own the entire property till then. However, after constant pressure and harassment from defendant no.1, Mr Ram Behari Mathur was forced to get 50% (fifty percent) share registered in the name of defendant no. 1 at that time. Further, based on the said agreement plaintiff was made nominee of the remaining 50% (fifty percent) share and the same was to be transferred to her after the death of her father. The Plaintiffs nomination is clearly reflected in the society records.

6. That since the demise of their father the defendant no. 1 has denied the plaintiffs right in the property and has gone to extreme lengths to deprive her of her right in the said property and has also deprived her of her share in the rent that he has been solely receiving since 2016.

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9. That on 20.01.2022 the plaintiff contacted defendant no. 1 to transfer her share in the property to her and also to share the rent of the said property with her. The defendant no. 1 misbehaved and refused to give the plaintiff her share and continued to make malicious efforts to deprive the plaintiff of her right in the said property.

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15. That the defendants are avoiding partition, it is therefore in the interest of the plaintiff to get the property partitioned by metes and bounds.

16. That the cause of action first arose when defendant no. 1 refused to transfer the plaintiffs share in the said property in phone call dated 20.01.2022. The cause of action further arose when the defendant denied the plaintiffs right claiming to be in possession of a will allegedly executed by the plaintiffs father through reply to legal notice dated 03.05.2022. The cause of action further arose when the defendant society refused to transfer the



nomination in favour of the plaintiff.”

16. Thus, the Plaint does disclose a cause of action in favour of the Respondent/Plaintiff. Learned Counsel for the Petitioners/Defendants submit that it is set out in Application filed under Order 7 Rule 11, that the Respondent/Plaintiff cannot claim 50% share in the suit property as her father/Mr. Ram Bihari Mathur is the owner of only 50% of the suit property. While it is the case of the Respondent/Plaintiff that it was agreed that 50% of the suit property would be the share of the Respondent/Plaintiff.

17. As can be seen from Paragraph 15 and 15.1 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. The contentions as raised by the Petitioner/Defendant in the Written Statement cannot be examined by the Court at this stage and these averments of the Petitioner/Defendant would be the subject matter of trial.

18. 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. It is further held that in order to consider an Application filed under Order 7 Rule 11 only the averments in the plaint have to be considered and the averments in the Written Statement 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 Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] ,

¹ (2020) 17 SCC 260



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]...

[Emphasis supplied]

19. As stated above, the learned Trial Court examined the Application and gave the finding that the Plaint does disclose a cause of action and that the jurisdiction of the Civil Court is not barred in terms of the Cooperative Societies Act. The examination by this Court shows that the plaint does disclose a cause of action.

20. In so far as concerns the contention of the Petitioner that the plaint is barred by Section 132 read with Section 70 of the DCS Act, this Court agrees with the finding of the learned Trial Court that the jurisdiction of the Civil Court is only barred with respect to disputes touching the constitution,



management and business of a cooperative society and not of civil disputes inter-se parties. The disputes of the nature as the present case is to be decided by the civil Court alone.

20.1 Section 132(1)(c) of the DCS Act states that jurisdiction of a Civil Court is barred where the dispute is to be referred to the Registrar as per 70 of the DCS Act. Sub-section (1) of Section 70 of the DCS Act provides for a bar on a Civil Court from entertaining certain disputes. It inter alia states that where a dispute touching the business of a Cooperative Society amongst its members, past members or between two Cooperative Societies exists, the dispute shall be referred to the Registrar for such a decision. The Section contains within itself an exception, which is with respect to a dispute regarding a disciplinary action against action taken by the Cooperative Society against a paid employee. Section 132(1)(c) and 70(1) is set out below:

"132. Bar of jurisdiction of civil or revenue courts.

(1) Save as provided in this Act no civil or revenue court shall have any jurisdiction in respect of-

(a) the registration of a cooperative society or its bye-laws or of an amendment of a bye-law;

(b) the removal of the committee;

(c) any dispute required under section 70 to be referred to the Registrar;
and

(d) any matter concerning the winding up and the dissolution of a co-operative society.

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70. Disputes which may be referred for arbitration.

*(1) Notwithstanding anything contained in any law for the time being in force, **if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the cooperative society or its committee against a paid employee of the co-operative society arises-***



(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the cooperative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one co-operative society and the liquidator of another co-operative society;

such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes."

[Emphasis Supplied]

20.2 A plain reading of the aforesaid Section shows that a suit for partition of property filed by the Respondent against her brother and her nephew, is a dispute which will not be barred by the provisions of Section 132(1)(c) read with 70(1) of the DCS Act.

21. It is settled law that the revisionary jurisdiction of this Court is limited to examine whether the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material irregularity.

21.1 The Supreme Court in the case of **Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.**²; clarified 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 CPC, it is not

² (2017) 14 SCC 132



open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

“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]

22. The examination by this Court shows that the Impugned Order does not suffer from any infirmity which would merit interference by this Court.

23. The present Petition is accordingly dismissed. The pending Application also stands closed.

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

25. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 1, 2025/ pa/ ha

[Click here to check corrigendum, if any](#)