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

% ***Date of Decision: 14.07.2025***

+ **C.R.P. 196/2025**

DR. VIJLA MENON & ANR.

.....Petitioners

Through: Mr. Akash Swami and Ms. Shashi
Ranjan, Advocates.

versus

SH. GOPINATH MENON

.....Respondent

Through: Mr. Amardeep Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 40823/2025 *[Exemption from filing certified copies]*

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

C.R.P. 196/2025 & CM APPL. 40824/2025 *[Stay]*

3. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 seeking to challenge an order dated 13.05.2025 passed in CS (DJ) 204/2019 by the learned District Judge-05, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11, Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] has been dismissed by the



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learned Trial Court imposing the costs in the sum of Rs.5,000/- in view of the fact that the Application as made, is delaying the final adjudication of the matter.

4. Learned Counsel for the Petitioners makes two submissions. In the first instance he submits that the Application under Order VII Rule 11, CPC was filed by the Petitioner [hereinafter referred to as “Application”] on two grounds. It is contended that the suit as filed by the Respondent/Plaintiff does not disclose any cause of action. A perusal of the Application reflects that two grounds have been taken by the Petitioners in the Application. Firstly, that the suit does not reflect any cause of action and secondly that the suit is barred by law.

5. Learned Counsel for the Respondent appearing on advance service submits that the suit discloses a detailed cause of action and that the Impugned Order reproduces the plaint and specifically sets out the Paragraphs which disclose the cause of action. Reliance is placed on Paragraphs 3 (g), (i), (j), (k), (l), (m) and (n) of the Impugned Order in this behalf to submit that the detailed cause of action has been set out in the plaint. Learned Counsel for the Respondent also submits that the matter is currently at the stage of cross-examination of the Plaintiff and that this Application has been filed only to delay the proceedings.

6. It is settled law that for a suit to be barred under the provisions of Order VII Rule 11, CPC would mean that it is barred by a specific law. The Supreme



Court in the *Kamala & Ors. v. K.T. Eshwara SA & Ors.*¹ case has held that barred by law means barred by a specific law and such a conclusion has to be drawn from the averments made in the plaint. The relevant extract of the *Kamala* case is reproduced below:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

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24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.”

[Emphasis Supplied]

7. A review of the Application, however, does not set out any details as to how the suit is barred by law. All that has been stated in the Application is that the cause of action raised by the Respondent/Plaintiff is directly and substantially related to the previously instituted suit i.e., CS (OS) 6/2016 [hereinafter referred to as the “previous suit”], which is pending before the Delhi High Court. No explanation has however been set out as to what the cause of action in the previous suit is and how it is substantially in issue as in the present case. None has been shown to the Court today either. There is an averment made in Paragraph 5.2 of the Application that the cause of action is

¹ (2008) 12 SCC 661



moonshine and the proceedings have not attained finality. It is apposite to extract Paragraphs 5.2 to 5.4 of the Application, which are set out below:

“5.2 It is submitted that the alleged moonshine cause of action of the Plaintiff deriving the same from the cause of action qua which the proceedings have yet not attained finality and is pending adjudication before the Hon’ble High Court of Delhi makes the present suit barred by Section 10 of CPC and the law of Res-Judicata operate as a bar against the present Suit which deserves to be dismiss on this count itself.

5.3 It is submitted the alleged moonshine cause of action raised by the Plaintiff in the captioned suit is directly and substantially related to the previously instituted suit i.e. CS (OS) 6/2016 which is still pending adjudication before the Hon’ble High Court of Delhi. In view of the same continuation of the present suit would directly be in teeth of the pending proceedings before the Hon’ble High Court of Delhi.

5.4 It is submitted the continuation of the present suit in any manner would have a direct bearing on the already instituted suit which is pending adjudication before the Hon’ble High Court of Delhi and the possibility of conflicting and contrary adjudication viz-a-viz the same subject matter cannot be ruled out and even evidence to be adduced in the present Suit will have a direct bearing on the previously instituted suit (CS (OS) 6/2016) and would jeopardize and prejudice the fate and outcome of the pending proceedings. Hence, the present suit cannot be continued and deserves the dismissal in terms of the principles laid down in Order VII Rule 11 (d) as this Hon’ble Court does not have the jurisdiction nor does the present suit have any cause of action which accordingly mandates the dismissal of the captioned suit.”

[Emphasis supplied]

7.1 The learned Trial Court, after examining Section 10 of the CPC and the plaint in previous suit, held that while the present suit is for damages for defamation, the previous suit was instituted for partition and rendition of accounts. It was further held that the issues in a suit where a person has been defamed cannot be adjudicated in a suit for partition and rendition of accounts. It is apposite to extract the findings as set out in the Impugned Order which show the detailed reasoning of the learned Trial Court below:

8. After considering the rival submissions made by Ld. Counsels for the



parties and perusing the record of the Court file, this court finds that the aforesaid **application is liable to be dismissed for following reasons:**

(a) Present Suit for damages for defamation is not based solely on **contents of letter dated 06.03.2018. Para 22 of the plaint (reproduced hereinabove) talks about slander as** well i.e. defamation through spoken words.

(b) On perusal of the plaint, a summary whereof has been set-out **hereinabove, it cannot be said that on a reading of the plaint no cause of action for the relief for defamation can be deciphered.**

(c) Section 10 CPC declares that no court should proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties and the Court before which the previously instituted suit is pending is competent to grant the relief sought. The test for applicability of Section 10 CPC is whether the decision in a previously instituted suit would operate **as res judicata in the** subsequent Suit. As already noted, the previously instituted suit is for partition and rendition of accounts. Present Suit is for damages for defamation. **Issues in the present Suit have been framed by the Ld. predecessor of this Court vide Order dated 24.01.2023. In the considered view of this Court, the issue whether the defendants have defamed the plaintiff can not be adjudicated in a suit for partition and rendition of accounts.**

(d) Even otherwise, an issue regarding maintainability of the present Suit on account of pendency of proceedings arising out of decree dated **30.01.2017 in CS OS No. 6/2016 has already been framed and onus to prove the same has been placed on the defendants.**

(e) Lastly, while examining whether the plaint could be rejected Order VII Rule 11 (a), the Court is not concerned with the chance of success of the plaintiff, on the basis of the facts averred by him. That is a consideration entirely foreign to Order VII Rule 11 (a). All that has to be seen is whether the plaintiffs have made out a right to sue. **If a right to sue stands made out on the facts averred in the plaint, the plaint discloses a cause of action, even if the cause of action be thin as tinsel (Hon'ble High Court of Delhi in Novartis AG & Anr. Vs. Zydus Healthcare Limited & Anr 297 (2003) Delhi Law Times 299).**"

[Emphasis supplied]

7.2 Given the contents of the Application filed under Order VII Rule 11, CPC and the discussions on the aspect of Section 10 of the CPC, this Court



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agrees with the findings in the Impugned Order that the defendants having defamed the Plaintiff cannot be adjudicated in a suit for partition and rendition of accounts. The plaint at this stage cannot be said to be barred by law.

8. So far as concerns the averment of the plaint not bearing any cause of action as set out by the by the parties, the learned Trial Court has reproduced the plaint in Paragraph 3 of the Impugned Order. The learned Trial Court has laid emphasis on several Paragraphs, including Paragraphs of the Plaint to give a finding that the plaint does disclose a cause of action.

9. Although, the plaint was not filed by the Plaintiff, a hard copy of the same has been handed across to the Court. The plaint as filed is a suit for recovery of damages in the sum of Rs.75 lacs from the Defendants on account of defamation of the Plaintiff. The suit emanates from a communication of 06.03.2018 which reproduces extract of a judgment and decree passed by a Coordinate Bench of this Court. The communication states that the Respondent/Plaintiff has usurped and embezzled large sums of money and further states that the entire estate of their deceased siblings will remain in Court until compensation for the embezzlement is granted.

9.1 The plaint further states that the decree as passed by the Court does not give a finding of embezzlement or that the estate of the deceased sibling of the parties was usurped by the Respondent/Plaintiff. The plaint further sets out that the party to whom the communication dated 06.03.2018 was addressed to, took further action and sent a reply to the Petitioners/ Defendants stating that they have acted upon the communication of 06.03.2018.



9.2 The plaint in addition also sets out that both these communications were put forth before the Court Commissioner on 30.11.2018 where proceedings in a suit were being undertaken. Lastly, it is averred in the plaint that the reputation of the Respondent/Plaintiff has been lowered in the eyes of the general public.

10. As stated above, the case of the Respondent/Plaintiff has been succinctly explained by the learned Trial Court in paragraph 3 of the Impugned Order. Paragraph 3 of the Impugned Order is set out below:

“3. This is a suit for recovery of damages on account of defamation of the plaintiff. Before adverting to the aforesaid application, it is necessary to put forth a brief case of the plaintiff as narrated in the plaint;

(a) That the plaintiff, who is 67 years of age, has built a very respectable and an honourable reputation for himself, his wife and his daughter. The Plaintiff has been doing business for the last over 25 years now and has all along maintained top notch ethical standards of conducting his business as well as his dealings with people, clients and all concerned and as a result the plaintiff has generated in response, from all such people, immense trust and respect due to which the plaintiff is looked up in high esteem and with immense respect.

(b) That Late Sh. Ravi Menon, brother of the plaintiff as well as of defendants 1 and 2, was having his own sole proprietorship business. That on 29th October, 2015, Ravi Menon, passed away intestate. He was owner of several properties, movable as well as immovable and since he did not marry and ultimately died intestate, the brother and sisters (plaintiff, defendants 1 & 2 and Ms. Nalini Menon, mentally ill sister of the parties), all became entitled to an equal share in the estate of Late Ravi Menon, as his legal heirs.

(c) That within two months of the death of Late Sh. Ravi Menon, both Dr. Vimla Menon (defendant 1) as well as Mrs. Lalita Daikoku (defendant 2) in December 2015 - January 2016, initiated a Suit for Partition and Rendition of Accounts before the Hon'ble Delhi High Court, against the plaintiff and others and even included their mentally ill sister (Ms. Nalini Menon) as Plaintiff 3. The said Suit was numbered as CS (OS) 6 of 2016.

*(d) The Plaintiff, in the said suit filed by the defendants, raised no objection to the share of each of the Legal Representatives of Late **Sh. Ravi Menon.** **The Hon'ble High Court of Delhi was pleased to pass a Preliminary***



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Decree on 14th December 2016 and was inter alia pleased to observe: -

"7. Once no Will of the deceased has been found, there is no impediment to a preliminary decree for partition declaring the three plaintiffs and the defendant no. 1 to be having 1/4th undivided share each in the state of their deceased brother Mr. Ravi Menon is accordingly passed"....

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(g) That both the defendants, with malice and malafide intentions, vide their letter dated March 6, 2018 have leveled false, frivolous, reckless and malicious allegations against the plaintiff which inter alia are per se Defamatory (Para No. 12 of the plaint)...

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xxx(i) (i)

(i) That some Defamatory extracts/ allegations leveled in the said Letter dated March 6, 2018 written, published and circulated by both the defendants, are being set out herein below:

"March 6, 2018

Rakesh Kumar

Chairman, India Exposition Mart Limited (IEM) & India Exposition Mart Limited

Dear Mr. Kumar,

....Ravi Menon died on 29.10.2015 (a copy of the death certificate's enclosed) and with that his proprietorship also ceased to exist. Subsequently, all his personal and company bank accounts were also closed. He was unmarried and died intestate thus leaving behind 3 sisters and a brother as for legal heirs. **The brother Mr. Gopinath Menon usurped the entire estate of our late brother and embezzled huge sums of money.** As a result, we three sisters were forced to file a suit in the Hon'ble High Court of Delhi for fair and just partitioning of the estate (a copy of plaint enclosed).

On 30th Jan 2017 the Hon'ble Justice Rajiv Sahai Endlaw passed an order in favor. The entire estate of Late Ravi Menon which includes the space at India Expo Mart B 02/30 is to be divided equally amongst his 4 surviving legal heirs except that Gopinath Menon's **share will remain in court till he compensates the 3 sisters for the embezzlement he has done. A decree to this effect has also been issued by Hon'ble Chief Justice G. Rohini** of the High Court of Delhi which is enclosed." (Para No. 14 of the plaint)

(j) That neither the Hon'ble High Court of Delhi in the above mentioned Suit (CS (OS) 6 of 2016) nor any other court of law, till this date has ever, ordered/ held or even observed that plaintiff has in any manner usurped the entire estate of Late Ravi Menon and/ or embezzled huge sums of money, or that the plaintiff's share will remain in the court till he compensates the defendants for the embezzlement done by him or that a



decree to this effect has been issued by the Hon'ble Chief Justice of the Delhi High Court. Thus, it would be trite to state that no court of law has ever held/ observed that any embezzlement of any sort was ever committed by the plaintiff as has been falsely, maliciously and with malafide intentions stated by the defendants in the said Letter dated March 6, 2018. (Para No. 15 of the plaint)

(k) That the "India Exposition Mart Ltd" (IEML) acted upon the said false, frivolous, malicious and defamatory Letter dated March 6, 2018 and the false oral narration given by both the defendants and believing the same, the India Exposition Mart Limited proceeded to even break open and change the locks of the said premises thereby tantamounting to committing the offence of criminal trespass. The said IEML also wrote a reply- letter dated 9.3.2018 addressed to the defendants, clearly indicating that they have fully acted upon the said malicious, false and defamatory publication/ letter as well as the false and defamatory verbal slander/ narration of false facts, representation made by both the defendants. It is also very disturbing and hurtful for the plaintiff to know that IEML believed the said false, malicious and reckless representation of the defendants, to be a bonafide representation and as a truthful one, thereby inviting them (IEML) to forthwith respond and take alleged precautionary measure, which in fact was totally uncalled for and illegal (Para No. 18 of the plaint).

(l) That both the defendants did not even stop at this and even filed the said Letter dated March 6, 2018 and the Response Letter of IEML dated 9.3.2018 before the Learned Court Commissioner on 30th November 2018 where the proceedings for Rendition of Accounts are being undertaken in the said Suit CS (OS) 6 of 2016. Besides this, both the defendants have lost no opportunity in maligning the reputation of the plaintiff, to whoever they could including friends, family and associates of the plaintiff, thereby lowering the character, integrity and credit of the Plaintiff, in their eyes. Thus, the defendants have intentionally and with malafide intentions made complete public display/ circulation of the false, frivolous, reckless and malicious averments of embezzlement contained in the said letter dated March 6, 2018 (Para No. 19 of the plaint).

(m) That the defendants, in addition, have also made the false allegations to whoever they could, including family, friends, relatives and associates by word of mouth, telephone etc, thereby lowering the reputation of the plaintiff in the society and the same also constitutes slander and publication of defamatory statements (Para No. 22 of the plaint).

(n) That the defendants have, with the malafide intention of lowering the moral and intellectual character, status and ability of the plaintiff, made the false, frivolous and malicious allegations, both written as well as oral, to said Mr. Rakesh Kumar, IEM and to whoever they could, including



***plaintiff's friends, relatives and the public at large**, who have also read and heard the said false imputations, which have been issued, published as well as circulated by the defendants (Para No. 23 of the plaint).”*

[Emphasis Supplied]

11. After setting out this detailed narration of sequence of events for filing the suit. The plaint also sets out in paragraph 28 that the cause of action to file the plaint emanates from the communication of 06.03.2018 in the following manner:

*“That the cause of action accrued in favour of Plaintiff for filing the present suit when admittedly, the **defendants made/published the Letter dated March 6, 2018, circulated the** same to Mr. Rakesh Kumar, IEM and defamed the Plaintiff to whoever they could, including relatives, friends and associates. It also accrued when the Defendants filed the **said Letter dated March 6, 2018** before the Court **Commissioner on 30.11.2018**. The cause of action is still continuing.”*

[Emphasis supplied]

12. 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. 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. Consequently, 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. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100. 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 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]

13. The learned Trial Court has found that the suit does disclose a cause of action. The examination by the Court does not show otherwise. There is a clear and distinct cause of action reflected. Since the Application under Clause VII Rule 11, CPC has to be decided on a demurrer reading the plaint and the documents annexed with the plaint, given the fact that the Respondent/Plaintiff has disclosed the cause of action this Court finds no infirmity with the Impugned Order on this aspect either.

14. The revisionary jurisdiction of this Court is limited. The Supreme Court



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in the case of *Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.*² has clarified that unless the Petitioner is able to show non-exercise of jurisdiction or exercise of jurisdiction by the Trial Court is not in accordance with law, no order under Section 115 of CPC can be passed. The Impugned Order is limited in its finding that the statements referred to by the Petitioner in his Petition, on their own, do not amount to defamation without a trial. The Supreme Court has further clarified 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 relevant extract is below:

*“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]

15. As discussed above, the examination by this Court does not show any ground for interference in the Impugned Order.

16. For the reasons as stated above, the Petition is dismissed subject to payment of costs of Rs.15,000/- payable to “DHCBA Cost A/c No. 15530110179338”. The proof of costs shall be filed within a period of four

² (2017) 14 SCC 132



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weeks. Pending Application stands closed.

17. Given that the matter is pending final adjudication, learned Counsel for the parties submit that the parties will not take any unnecessary adjournments before the learned Trial Court.

17.1 The parties are bound down by the statement made by their Counsel.

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

TARA VITASTA GANJU, J

JULY 14, 2025/pa