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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 16.04.2025*+ **C.R.P. 336/2023 & CM Appl.59560/2023****HARBHAJAN SINGH**

.....Petitioner

Through: Mr. Amit Gaurav, Adv.

versus

CHANCHAL SINGH DEOL AND ORS

.....Respondents

Through: Mr. Harish Chandra, Adv. for R-1.
Mr. Rambir Singh, Adv. for R-2.
Mr. Tarun, Adv. for R-3.**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 09.08.2023 [hereinafter referred to as "Impugned Order"] passed by learned Civil Judge, North, Rohini Court, Delhi. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner has been dismissed by the learned Trial Court.

2. The principal challenge made by the learned Counsel for the Petitioner is that the adequate Court fee has not been paid.

2.1 The contention of the Petitioner is refuted by the learned Counsel for the Respondents. He submits that the adequate Court fee was deposited on 09.08.2023, thus this objection of the Petitioner no longer survives.

3. So far as concerns the Impugned Order, the Petitioner had raised four



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contentions before the learned Trial Court. Firstly, that the suit is under valued and the Court fee affixed with the Plaint is deficient. Secondly, the plaint does not disclose the cause of action. Thirdly, that the suit for injunction is not maintainable since the title of the Plaintiff is in dispute and lastly, that the Plaintiff did not approach the Court with clean hands.

4. The learned Trial Court has examined all the contentions and found that so far as concerns the aspect of deficient court fee, by an order dated 04.01.2016, learned Trial Court had directed the Respondents/plaintiff to pay the deficient court fees however, the order dated 04.01.2016 did not contain any direction to the Respondents to file the deficient court fees, failing which the plaint of the plaintiff would be rejected. It was held that the such direction is mandatory requirement of Order VII Rule 11 of CPC and thus in the absence of any such direction, the order dated 04.01.2016 cannot be interpreted to be read in the same manner as that of an order passed under Order VII Rule 11 (c) CPC.

4.1. By way of the Impugned Order learned Trial Court has also disposed off an application filed by the Respondents under Section 151 of CPC, whereby learned Trial Court has condoned the delay in filing of the deficient Court fee.

4.2. Section 149 of the CPC prescribes a discretionary power which empowers the Court to allow a party to make good any deficiency in the Court fee. In any event and as stated above, this ground no longer survives since deficiency in the Court fee has already been paid by the Respondents.

5. The Supreme Court in the case of **P.K. Palanisamy v. N.**



Arumugham & Anr¹, has held that as and when the deficit court fee is paid, the same would be deemed to have been paid in the first instance.

“15. It, however, does not mean that whenever a plaint is presented with deficit court fee, the same has to be rejected outrightly. Section 149 of the Code provides for the court's power to extend the period. It reads as under:

“149. Power to make up deficiency of court fees.—Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”
t instance.”
instance.”

Section 149 raises a legal fiction in terms whereof as and when such deficit court fee is paid, the same would be deemed to have been paid in the first instance.”

[Emphasis Supplied]

5.1 The Supreme Court in the case of **Ganapathy Hegde v. Krishnakudva & Anr²**, has held that the proviso to Order VII Rule 11 CPC is attracted when the time for payment of deficit court fee has been fixed by the Court and the court fee is not supplied within the time appointed by the court. However, if the court fee is deposited there was no occasion for invoking provision of Order VII Rule 11 of CPC. The relevant extract of the **Ganapathy Hegde** case is below:

*“5. In our opinion, the High Court was not right in forming the opinion which it did. **The proviso to Order 7 Rule 11 CPC is attracted when the time for payment of court fee has been fixed by the court and the court fee is not supplied within the time appointed by the court. In the case at hand, though the plaint as originally filed was not affixed with the requisite***

¹ (2009) 9 SCC 173

² (2005) 13 SCC 539



court fee stamps, but before the suit was registered, the deficit court fee was supplied. The present one is not a case where the court had fixed the time for payment of requisite stamp paper which was not done within the time fixed and thereafter the plaintiff was called upon to seek an extension of time. Had that been the case, then, under the proviso, the plaintiff would have been called upon to assign and show the availability of any cause of an exceptional nature for delay in supplying the requisite stamp paper within the time fixed by the court. The trial court was also empowered under Section 149 CPC to extend the time. In the present case, the order passed by the trial court accepting the deficit court fee paid on 23-2-2000, thereafter registering the suit on 10-4-2000 and consequently the order dated 3-11-2001 rejecting the defendant-respondents' application under Order 7 Rule 11 CPC were perfectly in accordance with law and within the discretion conferred on the trial court with which the High Court ought not to have interfered in exercise of the jurisdiction vested in the High Court under Section 115 CPC. The order of the High Court, if allowed to stand, is likely to occasion failure of justice."

[Emphasis Supplied]

5.2 Thus, there being no default as is envisaged by the provision of sub-rule (c) of Order VII Rule 11, CPC or its proviso, a challenge on the basis of this ground is not maintainable.

6. On the aspect of Plaintiff not approaching the Court with clean hands, the learned Trial Court has found that this is not a ground under Order VII Rule 11 of the CPC and has rejected this ground. This Court agrees. This ground is not available under Order VII Rule 11, CPC.

7. The contention of the Petitioner that the plaint does not disclose any cause of action has also been rejected by the learned Trial Court since it is the case of the Respondents that the Respondents are the owner and in possession of the suit property and have thus, sought a relief for permanent and mandatory injunction against the Petitioner. The learned Trial Court has found that the cause of action exists in the present plaint and thus, this



contention has been rejected as well.

7.1 An examination by this Court shows the plaint to contain a detailed cause of action. Thus, this finding of the learned Trial Court does not require to be interfered with.

8. Lastly, the contention that the suit for injunction is not maintainable since the title of the Respondents/Plaintiff is in dispute. The ground as raised by the Petitioner is based on a Police complaint which the Petitioner seeks to rely upon. The learned Trial Court found that at stage of adjudicating an application under Order VII Rule 11 of the CPC what is required to be looked at is just the plaint, and the Plaintiff has averred in the plaint, that he has title as well as possession of the suit property. Thus, the Application has been dismissed.

9. It is settled law that at the time of examining an Application under Order VII Rule 11, CPC what is required to be seen is only the plaint and documents filed with the plaint. The Court is not permitted to examine the defence of the Defendant's documents. The Supreme Court in the case of ***Saleem Bhai & Ors v. State of Maharashtra & Ors.***³, has held that the relevant facts which need to be looked into for deciding an application under Order VII Rule 11 CPC are the averments in the plaint. The averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. The relevant extract of the ***Saleem Bhai*** case is below:

“ 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

³ (2003) 1 SCC 557



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 of 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. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

[Emphasis Supplied]

10. The revisionary jurisdiction of this Court is limited. The Court is not required to examine the factual aspect of the matter, the Court only has power to see if 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.

11. The Supreme Court in the case of **Ambadas Khanduji Shinde & Ors v. Ashok Sadashiv Mamurkar & Ors**⁴; 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 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

⁴ (2017) 14 SCC 132



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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]

12. In any event and as is stated above, the examination by this Court shows that the Impugned Order does not suffer from any irregularity which would merit interference by this Court.

13. Accordingly, the Petition is dismissed. The pending Application also stands closed.

14. It is clarified that this will not preclude the Petitioner from raising all contentions at the time of trial. All rights and contentions of the parties are left open in this regard.

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

TARA VITASTA GANJU, J

APRIL 16, 2025/r/pa

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