



2025:DHC:4450



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 24.04.2025***+ **C.R.P. 351/2023 & CM Appls.61643/2023, 16120/2024**

T.R. CHADHA AND CO. LLP. ....Petitioner

Through: Ms. Samapika Biswal, Adv.

versus

SATYANARAYAN JHUNJHUNWALA &amp; ORS. ....Respondents

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva and Ms. Nimmi Babu, Adv. for R-1 and 2.

**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 [hereinafter referred to as "CPC"] impugning the order dated 26.07.2023 [hereinafter referred to as "Impugned Order"] passed by the learned Additional District Judge-01, North East, Karkardooma Courts, New Delhi. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner (Defendant No. 1 before the learned Trial Court) [hereinafter referred to as the "Application"] has been dismissed.

2. The challenge that has been raised by the learned Counsel for the Petitioner before this Court is two-fold. Firstly, she submits that the suit is barred by law and secondly, that the suit is bereft of any cause of action. In support of its contentions, learned Counsel for the Petitioner seeks to rely upon Section 31 of the Specific Relief Act, 1963 [hereinafter referred to as "SR Act"] as well as definition of "Instrument" under Section 2(14) of the



Indian Stamp Act, 1899 [hereinafter referred to as the “Stamp Act”].

2.1 Learned Counsel for the Petitioner, on the aspect of no cause of action, submits that the plaint reveals only an “illusory” cause of action.

3. Learned Counsel for Respondent Nos. 1 and 2, on the other hand submits that the suit filed was for injunction, declaration and damages. The challenge in the plaint was with respect to the issuance of the forensic report which has been prepared by the Petitioner, who is the auditor appointed by Respondent No. 3/Bank of Baroda.

3.1 Learned Counsel for the Respondent Nos. 1 and 2, in the first instance, submits that the forensic report is clearly a written instrument as is envisaged under Section 31 of the SR Act. He further submits that as a consequence of the forensic report, the rights of the Respondent Nos. 1 and 2, who are Plaintiffs before the learned Trial Court, are being affected.

3.2 It is further submitted that the effect of the forensic report will lead to initiation of both civil and criminal proceedings, thus the forensic report will lead to serious consequences against Respondent Nos. 1 and 2.

3.3 Lastly, it is contended that the forensic report declares the Respondent Nos. 1 and 2 as a wilful defaulter and has far and serious reaching consequences. Reliance is placed on paragraph 24 of the plaint in this behalf.

4. On the aspect of no cause of action, it is submitted that a meaningful reading of the plaint discloses a cause of action.

5. The learned Trial Court examined the Impugned Order and relied on the judgments passed by the Supreme Court in respect of the plaint disclosing cause of action to give a finding that the cause of action means



the bundle of facts, which would be necessary for the Plaintiff to prove, if traversed, in order to support a right of the Plaintiff to the judgment by the Court. The learned Trial Court relied on paragraph 26 of the plaint, which is the cause of action paragraph, and passed a direction that the cause of action has arisen on various dates as is set out therein.

6. A reading of the plaint shows that the Respondent Nos. 1 and 2 have set out in detail their reasons for filing of a case as well as the cause of action. The relevant extract of the plaint is reproduced below:

**“CAUSE OF ACTION**

**26. That the cause of action for this suit has arisen on various dates but certainly on 27.02.2019, when the concocted report was submitted by Defendant No.1 just to get their audit fees payment from. Defendant No. 2. The cause of action further arose when the Defendant No. 2 on account of the patently illegal report prepared by Defendant No. 1 declared the Plaintiff(s) as 'Wilful Defaulter'. The cause of action is continuing and subsisting till date.”**

[Emphasis Supplied]

7. It is no longer *res integra*, that the power conferred on a Court by this provision is a drastic one and has to be exercised with caution, as a case is dismissed by a Court at the threshold. It is also a settled law that whether a plaint discloses a cause of action or not, is essentially a question of fact and the averments made in the plaint in the entirety have to be looked at. The test in an Application under Order VII Rule 11 CPC is that if the averments taken in the plaint are said to be correct, can a decree be passed.

7.1 A Division Bench of this Court in the judgment of ***India International Centre v. Hema Gusain***<sup>1</sup>, while discussing the law as laid down in the various judgment of the Supreme Court, held that whether a plaint discloses a cause of action or not, is essentially a question of fact and

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<sup>1</sup> 2024 SCC OnLine Del 828



the averments made in the plaint in the entirety have to be looked at. The test in an Application under Order VII Rule 11 CPC is that if the averments taken in the plaint are said to be correct, can a decree be passed. The relevant extract is below:

**“18. It is also a settled law that whether a Plaint discloses a cause of action or not, is essentially a question of fact and the averments made in the Plaint in the entirety have to be looked at. The test in an Application under Order VII Rule 11 CPC is that if the averments taken in the Plaint are said to be correct, can a decree be passed. [See: Frost International Limited vs. Milan Developer and Builders Limited and Another].**

19. The Supreme Court in a recent case of **Geetha v. Nanjundaswamy**, while relying on the principles enunciated on **Dahiben** case, has set out in detail the principles to be followed when an Application under Order VII Rule 11 CPC is filed. It has been emphasised that this provision is in the nature of a summary provision where a case is decided without any evidence or trial. It has also been held that power conferred by the provision can be concerned only if one of the specific grounds specified in Clauses (a) to (e) of Order VII Rule 11 CPC is established. The relevant paragraphs of the **Geetha** case are extracted below:

**“6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali, as follows:**

**“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.**

**23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.**



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**23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)**

*“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”*

**23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R. V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].**

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in



*Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281:(1998) 2 GLH 823]....*

[Emphasis Supplied]

8. A detailed cause of action has been set out in the plaint by the Respondent Nos.1 and 2/Plaintiffs, wherein it has been stated that the cause of action has arisen on various dates including on 27.02.2019 when the audit report was submitted by the Petitioner. It has been further stated that the cause of action arose when the Respondent No. 3, on account of the audit report, had declared Respondent No 1 and 2 as “wilful defaulter”. Thus in view of the settled law, this Court finds that the challenge of the Petitioner to this aspect is without any merit.

9. So far as concerns, the contention of the Petitioner that the suit is barred by law, it is settled law that barred by law means barred by the specific law and such a conclusion has to be drawn from the averments made in the plaint.

9.1. The Supreme Court in ***Kamala v. K.T. Eshwara Sa***<sup>2</sup>, has held that Order 7 Rule 11(d) of the Code has limited application, and 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. The relevant extract 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)**

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<sup>2</sup> (2008) 12 SCC 661



**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]

10. The other ground for challenge raised by the Petitioner is that a decree of cancellation under Section 31 of the SR Act can only be granted in respect of a “written instrument”. In this context, reliance is placed by the learned Counsel for the Petitioner on Section 2(14) of the Stamp Act.

10.1 It is the case of the Petitioner that although this ground was taken in the Application filed by the Petitioner, no finding with respect to this forms part of the Impugned Order.

11. Learned Counsel for Respondent Nos.1 and 2, on the other hand, maintains the stance of the Petitioner, that a forensic audit report is not an instrument and thus a suit for cancellation cannot be maintained, is without any merit. It is submitted that the statute recognises all types of declaratory reliefs and is not restrictive in its interpretation.

12. Concededly, the Impugned Order deciding the Application under Order VII Rule 11 of the CPC has dealt with various grounds taken by the Petitioner in the Application including that the Plaint does not disclose any cause of action. However, the learned Trial Court clearly does not deal with any other ground except for the ground of no cause of action. It has been held by the learned Trial Court that these questions cannot be decided summarily at this stage. The relevant extract of the Impugned Order is set



out below:

*“6. Reverting to the facts in hand, this is a suit for cancellation of the Forensic audit report dated 27.02.2019 as void ab-initio and all consequential actions taken thereafter as invalid, void and non-est. Defendant no.1 has sought rejection of plaint on several grounds. One, that plaintiffs have no locus to challenge the Report since same is against the company and plaintiffs are its Directors. Second, that the plaint lacks any averment or material particulars as to how the said report is void or that the main grievance of the plaintiffs is against the notice dated 03.06.2020 which has not been challenged in the present suit and in the absence of any relief of declaration, plaintiffs cannot maintain the present proceedings. All the said questions cannot be decided summarily at this stage since it is settled proposition of law that the averments in the plaint are the germane for the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. At the same time, it has also been held that the list of documents filed alongwith the suit is part of the pleadings (Ref Liverpool & London SP & I Asson. Ltd. v. M.V. Sea Success) (2004) 9 SCC 512.”*

[Emphasis Supplied]

12.1 The learned Trial Court has held that there is a continuing and subsisting cause of action which has been set out in the Plaint by Respondent Nos.1 and 2. As discussed above, this Court finds no infirmity with this finding of the learned Trial Court.

13. However, since there is no finding on the contention of the Petitioner as raised under Order VII Rule 11(d) of the CPC in the Application that the suit is barred by Section 31 of the SR Act, this Court deems it apposite to dispose of the present Petition with directions to the learned Trial Court to pass an order adjudicating this plea of the Petitioner.

14. The Petition is disposed of in the foregoing terms. All pending Applications stand closed.

15. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial



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Court. The rights and contentions of both the parties are left open in this behalf.

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

**TARA VITASTA GANJU, J**

**APRIL 24, 2025/r/ha**

*Click here to check corrigendum, if any*