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

+ **C.R.P. 320/2024**

SMT GOMTI TIWARI

.....Petitioner

Through: Mr. Vinay Rath
(DHCLSC) with Mr.
Pratham Sharma, Adv.

versus

RESIDENTS WELFARE ASSOCIATION

CA BLOCK

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **21.02.2025**

CM APPL. 63925/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 63926/2024 (for condonation of delay)

3. For the reasons mentioned in the application, the same is allowed.
4. The delay of 67 days in filing the petition is condoned.
5. The application stands disposed of.

C.R.P. 320/2024 & CM APPL. 63924/2024 (for stay)

6. The present appeal is filed challenging the order dated 27.04.2024, passed by the learned Trial Court, in CS SCJ 711/21, dismissing the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC').
7. The suit was filed by the respondent/ plaintiff claiming to be a Resident Welfare Association ('RWA') under the provisions of Societies Registration Act, 1860.
8. It is claimed that the plaintiff is maintaining a common area of C.A. Block, Shalimar Bagh Housing Complex since the year 1989. It is further claimed that the petitioner / defendant is

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an occupant in one of the properties situated in the complex and, therefore, she is liable to pay monthly maintenance charges for facilities including security, CCTV cameras, maintenance of parks, drains, street lights, sewer lines etc.

9. Plaintiff claiming that the said charges have not been paid by the petitioner filed the suit seeking recovery of dues to the tune of ₹30,900/- till March, 2021.

10. Further, injunction was sought to direct the petitioner to comply with the rules and regulations of the DDA and become a member of the plaintiff association. A restraining order was also sought against the petitioner to restrain her from creating any nuisance by feeding stray dogs in the vicinity of the house.

11. The petitioner filed an application under Order VII Rule 11 of the CPC on several grounds such as the plaintiff is not registered with DDA, and it is thus not entitled to recover the monthly maintenance charges; the plaintiff cannot direct the petitioner to become a member of RWA since such membership is voluntary in nature; the suit is barred by limitation since the plaintiff has claimed pending dues since the year 2012; the Court fees is inadequate; etc.

12. The learned Trial Court dismissed the application holding that the entitlement of the plaintiff to recover the alleged dues cannot be looked into at this stage. It was observed that the suit cannot be rejected on the ground of limitation as the dues that are payable three years preceding the filing of the suit may still be recoverable. It was further observed that as part claim of the plaintiff may be hit by limitation, no purpose would be served at this stage by seeking the entire court fee.

13. The learned counsel for the petitioner submits that the suit was filed without any cause of action and no documents were



filed by the plaintiff to show the right to claim any subscription charges from the petitioner or to show that the membership of the plaintiff is mandatory and not voluntary.

14. He submits that the amount payable towards the maintenance cannot be forced upon the petitioner. He further submits that the suit is barred by limitation as the respondent has sought dues which are allegedly pending from the year 2012 up to March, 2021.

15. The law in regard to rejection of the plaint under Order VII Rule 11 of the CPC is well settled. The aforesaid provision empowers the Court to summarily dismiss a suit at the threshold, before the plaintiff has had an opportunity to lead evidence and establish its case, if it is found that one of the conditions specified therein is met. The objective of the provision is to quell bogus and meaningless suits at the outset when the said suits *ex facie* appears to be an abuse of the process of law. The Hon'ble Apex Court in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366*** has succinctly discussed the law in relation to Order VII Rule 11 of the CPC. The relevant portion of the same is reproduced hereunder:

“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

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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.

23.4. In *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court....

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [*Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137]

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...

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*, (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 cause of action, 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, (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 v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.

*23.15. The provision of Order 7 Rule 11 is **mandatory** in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. **If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.**”*

(emphasis supplied)

16. I find no infirmity in the impugned order passed by the learned Trial Court. The learned Trial Court has rightly noted that the petitioner is one of the occupants of the housing complex. It is not the case of the petitioner that the complex is not being maintained by the plaintiff as claimed in the suit.

17. In such circumstances, whether any formal membership is required on account of the petitioner being a resident of the complex or whether the petitioner is liable to pay any charges towards the maintenance on account of staying in the housing complex which is undisputedly maintained by the RWA, can only be tested after the parties are permitted to lead evidence and the suit cannot be held to be without cause of action.

18. Moreover, since it is not the case of the petitioner that the services as provided by RWA are not being used by her. Thus, whether any amount is payable and if the petitioner can be forced to pay the amount, can also only be determined after the parties



are allowed to contest their case by leading evidence.

19. Insofar as the argument in relation to the suit being barred by limitation is concerned, as rightly noted by the learned Trial Court, even if the petitioner succeeds in proving that no amount is recoverable beyond a period of three years, the same would only have a bearing on the quantum of the amount which would ultimately be decreed in favour of the plaintiff, if it succeeds in establishing its right to recover the alleged dues. The same cannot be a ground for rejection of the entire plaint.

20. The recovery of such amount being barred by limitation is, therefore, a mixed question of facts and law.

21. In regard to the objection regarding payment of Court fees, in the opinion of this Court, the learned Trial Court rightly observed that no purpose would be served by directing deposit of entire Court fees at this stage. The plaintiff can always be directed to deposit the deficient Court fees at the time of preparation of the decree since the entire amount may not ultimately be recoverable.

22. From a perusal of the plaint, it does not appear to be a case where there is no cause of action for the respondent to seek recovery of the dues, especially when it is undisputably maintaining the housing complex where the petitioner is residing. All the agitated issues can only be conclusively determined by the learned Trial Court after the parties have led their evidence.

23. In view of the above, I find no merit in the present petition and the same is, therefore, dismissed.

24. All pending applications also stand disposed of.

AMIT MAHAJAN, J

FEBRUARY 21, 2025/“SS”