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

Date of Decision: 03.04.2025

+ **C.R.P. 45/2024**

PUNJAB NATIONAL BANK

.....Petitioner

Through: Mr. Ravinder Gupta, Advocate.

versus

SH. BABU RAM KASHYAP

.....Respondent

Through: Mr. Shailendra Ojha, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition seeks to challenge the order dated 10.10.2023 passed by the learned Civil Judge, North West District, Delhi [hereinafter referred to as the "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) filed by the Petitioner (Defendant No.1 before the learned Trial Court) have been dismissed.

2. A perusal of the record shows that that Impugned Order sets out in detail as to the objections taken by the Petitioner in its Application under Order VII Rule 11 of CPC being:

(i) that the Civil Court does not have any jurisdiction in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"];



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- (ii) Secondly, that there is no cause of action in favour of the Petitioner;
- (iii) Lastly, that the suit is barred by the provisions of Section 41 and 42 of the Specific Relief Act, 1963.

2.1 Two other averments were made by the Petitioner that the Plaintiff is in collusion with other Defendants to grab the property and that there is a contradiction in the Plaint.

3. The record reflects that no Reply to the Application under Order VII Rule 11 of CPC were filed by the Respondents before the learned Trial Court and oral arguments were addressed. The learned Trial Court examined each contention that was raised by the Petitioner and found that the objections of the Petitioner/Defendant No.1 before the learned Trial Court were without merit.

4. So far as concerns the first objection on the jurisdiction of the Civil Court in terms of the bar under the SARFAESI Act, it was held that the Respondent was neither the borrower nor the guarantor of the loan sanctioned by the Petitioner in favour of late Md. Shabber Ahmed (erstwhile owner of the suit property) and accordingly as per the judgment of the Supreme Court in *Mardia Chemicals Ltd. & Ors. v. Union of India & Ors*¹, if the civil rights of persons other than the borrower or guarantor are involved the jurisdiction of the Civil Court would not be barred.

4.1 Thus, on the aspect of the Plaint being barred by the provisions of Section 34 of the SARFAESI Act, the learned Trial Court examined the *Mardia Chemical* case and held that the Civil Court has jurisdiction under certain circumstances to entertain Petitions.

¹ AIR 2004 SC 237



4.2 In addition, the learned Trial Court also found that the Plaintiff has set out in his Complaint sufficient averments regarding fraud, and thus, in view of the allegations of fraud, the Civil Court has jurisdiction to try the present Petition.

5. On the second aspect of no cause of action, the learned Trial Court has found that there is a detailed cause of action set out in the Complaint. This Court has also examined the Complaint and has rejected this contention.

6. So far as concerns the contention *qua* the Petition being barred by the provisions of Section 41 and 42 of the Specific Relief Act, 1963, the learned Trial Court has found that the Petitioner (Defendant No.1) failed to show as to how it was barred, in view of the fact that the Respondent (Plaintiff) were not seeking any injunction.

7. On aspect of contradiction in the Complaint, the learned Trial Court has found that no contradiction has been made out.

8. Lastly, on the aspect of collusion, the learned Trial Court held that this needs to be examined at a later stage and cannot be examined at the threshold and hence, found no merit in this objection either..

9. It is apposite to extract Order VII Rule 11 of CPC, which read as follows:

“11. Rejection of complaint.-

The complaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the complaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by



the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

[Emphasis Supplied]

10. A plain reading of the provision shows that no ground of collusion or contradictions is set out under the provisions of Order VII Rule 11 of the CPC. Thus, the contentions of the Petitioner are without any merit and do not require any further discussion.

11. On the ground of the Petitioner that there exists no cause of action, this Court agrees with the learned Trial Court. The examination of the Plaint shows that the Respondent/Plaintiff has described a detailed cause of action. It is stated therein that on 06.05.2011, the Respondent purchased the 3rd floor of the building bearing Mpl No. 1126/74, Devaram Park, Tri Nagar, New Delhi – 110035 from late Md. Shabber Ahmed. Thereafter, cause of action arose when the Petitioner pasted legal notices dated 18.12.2021 and 13.12.2022 on the main gate of the Respondent's house. In essence, it is the case of the Respondent/Plaintiff that the said Shabeer Ahmed (now deceased) and his family i.e., Defendant Nos. 3 to 5 along with the Petitioner Bank have defrauded the Respondent/Plaintiff. It is stated that the Respondent/Plaintiff is neither the borrower nor the guarantor of the loan



sanctioned by the Petitioner Bank. Thus, this contention of the Petitioner is without merit.

12. The learned Trial Court has held that in view of the allegations of fraud, the Civil Court would have jurisdiction to entertain this Petition.

13. 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 exercise jurisdiction which is not vested or has acted with illegal or material irregularity.

13.1 The Supreme Court in the case of *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*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 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]

14. The Petitioner has failed to show under what circumstances, the

² (2017) 14 SCC 132



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jurisdiction was exercised illegally or with material irregularity. Each contention of the Petitioner has been examined in detail.

15. At this stage, learned Counsel for the Petitioner submits that he wishes to withdraw the Petition and to agitate his contentions before the learned Trial Court. He seeks and is granted permission to withdraw the present Petition.

16. Accordingly, the Petition is dismissed as withdrawn.

17. The Petitioner is at liberty to agitate his contentions before the learned Trial Court *albeit* in accordance with law.

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

TARA VITASTA GANJU, J

APRIL 3, 2025/r

Click here to check corrigendum, if any