



2025:DHC:4310



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

Date of Decision: 19.05.2025

+ **C.R.P. 388/2024**

SUUNIL KOHLI

.....Petitioner

Through: Mr. Sagar Pathak, Advocate.

versus

MADHU AGGARWAL THROUGH HER LR BARKHA BANSAL

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 76173/2024 [Delay in re-filing Appeal]

1. This is an Application seeking condonation of delay of 35 days in re-filing the Appeal.
2. For the reasons as stated in the Application, the delay is condoned.
3. The Application stands disposed of.

C.R.P. 388/2024 & CM APPL. 76171/2024 [Stay]

4. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge the order dated 07.08.2024 passed by the learned District Judge, Shahdara District, Karkardooma Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order the Application under Order VII Rule 11, CPC has been dismissed.



5. Given the order that the Court proposes to pass today, this Court does not deem it necessary to issue Notice in the matter.

6. It is the case of the Petitioner that a suit for mandatory and permanent injunction and recovery of *mesne* profits and damages was filed by the Respondent/Plaintiff before the learned Trial court. The Petitioner filed an Application under Order VII Rule 11, CPC before the learned Trial Court [hereinafter referred to as the “Application”]. In this Application, a plea was taken by the Petitioner that the learned Trial Court does not have any pecuniary jurisdiction to entertain the present suit, in view of the fact that the market value of the suit property even as per the Respondent/Plaintiff is Rs.2.75 crores. Various other grounds were also taken by the Petitioner in the Application filed.

7. The grievance of the Petitioner is that there is no finding in the Impugned Order on the objections raised by the Petitioner on the lack of pecuniary jurisdiction of the learned Trial Court.

8. The record reflects that the Petitioner had in the Application alluded to the fact that the Plaintiff had set out that the market value and consideration of the suit property is Rs.2.75 crores, and thus, the plaint filed is beyond the pecuniary jurisdiction of the learned Trial Court. The relevant extract of the Application which sets out this ground is below:

“5. That in the grab of the present suit the Plaintiff is seeking recovery of possession as per prayer clause “a” and has prayed that-

“A decree for recovery of possession in favor of the Plaintiff and against the Defendant, thereby directing the Defendant to hand over the physical vacant possession of the suit property i.e., being property bearing no. 181, Second Floor, Jagriti Enclave, Delhi-110092, and is more specifically shown in color red in the site plan, unto the Plaintiff”



6. It is hereby submitted that as per Plaintiff on admission in Paragraph 2 of the amended plaint, the market value and consideration of the suit property is Rs. 2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh Only) which is beyond the jurisdiction of this Hon'ble Court. The amended plaint of the Plaintiff read as under: -

“That the Defendant in the month of April 2011, approached the Plaintiff for repurchase of the suit property and accordingly after repeated requests of the Defendant for the same an agreement to sell dated 13.04.2011 was executed between the Plaintiff and Defendant for a total consideration of Rs. 2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh Only) and a sum of Rs 25,00,000/- (Rupees Twenty-Five Lakh Only) was received by the Plaintiff as part consideration from the Defendant. As per the aforesaid agreement to sell, a further payment of Rs. 50,000/- (Rupees Fifty Thousand Only) was received by the Plaintiff from the Defendant on or before 30.06.2011 and rest of the balance consideration of Rs. 2,49,50,000/- (Rupees Two Crore Forty-Nine Lakh Fifty Thousand Only) was to be paid by Defendant on or before 30.09.2011 the Plaintiff.”

Therefore, since the consideration of the suit property has been stated by the plaintiff to be Rs. 2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh Only) as per the Agreement to Sell dated 13/04/2011 and that the Plaintiff has admitted the same, therefore this Hon'ble Court does not have the pecuniary jurisdiction to adjudicate upon the present suit.

7. That the present suit is liable to be dismissed since the Plaintiff has not valued the suit properly and the same is undervalued. That the suit property in question is measuring 320 sq. yds. i.e., 267.55 sq. mts. which falls under the area of Jaqriti Enclave, Delhi. That the suit property in question falls under the Category D and the minimum rate for valuation of the land for residential use is Rs. 1,27,680/- per sq. mts. and further the construction cost is Rs. 11,160/- per sq. mts. per floor, hence the value to the suit property is Rs. 3,71,46,442/-.”

[Emphasis Supplied]

9. This is also reflected in paragraph 2 of the Plaint dated 08.09.2015 filed by the Respondent/Plaintiff, which is set out below:

“2. That the defendant in the month of April, 2011 approached the plaintiff for repurchase of the suit property and accordingly after repeated requests of the defendant for the same an agreement to sell dated 13.04.2011 was executed between plaintiff and the defendant for a



total consideration of Rs.2,75,00,000/- (Rupees two crores and seventy five lacs only) and a sum of Rs. 25,00,000/- (Rupees twenty five lacs only) was received by the plaintiff as part consideration from the defendant. As per the aforesaid agreement to sell, a further payment of Rs.50,000/-(Rupees fifty thousand only) was received by the plaintiff from the defendant on or before 30.06.2011 and rest of the balance consideration of Rs. 2,49,50,000/-(Rupees Two Crores Forty Nine Lacs And Fifty Thousand Only) was to be paid by the defendant on or before 30.09.2011 to the plaintiff.”

9.1 Paragraph 2 of the amended Plaint which was placed on record on 17.07.2021, also contains the same averments.

10. However, a perusal of the Impugned Order shows that the objection *qua* lack of pecuniary jurisdiction has not been adverted to by the learned Trial Court in the Impugned Order despite this ground being taken in the Application.

11. Since the plea of lack of pecuniary jurisdiction of a Court goes to the root of the matter and since this has been raised by the Petitioner, the same should have been adjudicated by the learned Trial Court. The Impugned Order is silent on this aspect.

12. In view thereof, this Court deems it apposite to set aside the Impugned Order with directions that the learned Trial Court adjudicate the objection on the aspect of lack of pecuniary jurisdiction as has been raised by the Petitioner in the Application filed under Order VII Rule 11 of the CPC.

13. The Petition is disposed of in the foregoing terms. The pending Application also stands closed.

14. It is however clarified that this order has been passed without prejudice to the rights and contentions of the parties which are left open to



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be agitated before the learned Trial Court.

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

TARA VITASTA GANJU, J

MAY 19, 2025/pa/ha/jn

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