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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 07.04.2025

+ **C.R.P. 213/2019, CM APPL. 43380/2019**

RAZIA SULTANA & ORS

.....Petitioners

Through: Mr. Manuj Aggarwal, Adv.

versus

FAZAL UR REHMAN

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed by the Petitioners under Section 115 of Code of Civil Procedure, 1908 ('CPC') seeking to challenge an order dated 18.07.2019 passed by Ld. Civil Judge, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, an Application under Order VII Rule 11 of CPC filed by the Petitioners (Defendants before the learned Trial Court) has been dismissed.

2. None appears for the Respondent.

3. A Coordinate Bench of this Court had by an order dated 27.09.2019 directed that the proceedings before the learned Trial Court shall remain stayed till the next date of hearing. The matter has continued as is since then.

4. Learned Counsel for the Petitioners makes two submissions. In the first instance, learned Counsel submits that the suit filed before the learned Trial Court is barred by the provisions of Section 50 of the Delhi Rent



Control Act, 1958 [hereinafter referred to as ‘the DRC Act’] in view of the fact that the rental of the premises-in-issue is below Rs.3,500/- per month. Secondly, it is contended by the learned Counsel for the Petitioners that the suit is also not maintainable on account of deficiency in the Court Fees filed and for lack of pecuniary jurisdiction.

5. So far as concerns the plea taken by the Petitioners before this Court is that the suit is deficient Court Fee, reliance is placed upon paragraph 10 of the Application filed under Order VII Rule 11, CPC, which states that the plaint is not valued adequately for the purposes of pecuniary jurisdiction. The learned Trial Court in the Impugned Order has given a finding that the Court Fees as affixed with the Plaint by the Respondent/Plaintiff appears to be deficient. However, no directions to make good the deficit court fees, in accordance with law have been passed.

6. It is apposite to extract Order VII Rule 11(c) of the CPC which is set out below:

“Order 7 Plaint

11. Rejection of plaint.— The plaint 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 plaint is written 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-papers 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-papers, 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]

6.1 A plain reading of sub-rule (c) of Order VII Rule 11 of the CPC shows that the provision has inbuilt in itself the power to condone the delay *qua* the deposit of Court fee. It is settled law that if it is so found by the Court that the Court Fee is deficient, the Court has to grant an opportunity to the plaintiff to make up the deficiency in Court Fee in accordance with the sub-rule (c) and proviso to Order VII Rule 11 of CPC.

6.2 A Coordinate Bench of this Court in the case of ***Binu Anand Khanna v. Ratan Tata***¹, has held that if the Court comes to a conclusion that the plaintiff has not affixed requisite Court Fee, the Court has to grant an opportunity to the plaintiff to make up deficiency in Court Fee. The relevant extract of the ***Binu Anand*** case is reproduced below:

*“5. What cannot be disputed is that the proposed amendment by the plaintiff no way changes the cause of action or the basic case pleaded by the plaintiff in its original plaint. Once there is no substantial change in the cause of action in the case originally pleaded by the plaintiff, the law of amendment has received very liberal construction in the recent years. All that the plaintiff wants to do, is to correct certain defects in the plaint which in any case would be irregularities and not illegality of any nature which would fatal to the suit of the plaintiff. **Even if the Court was to come to the conclusion that plaintiff has not affixed requisite court fee, it has to grant an opportunity in accordance with proviso to Order 7 Rule 11(c) of the CPC granting an opportunity to the plaintiff to make up deficiency in court fee. So if the plaintiff wishes to correct the paragraph in relation to the relief claimed as well as the court fee payable** in accordance with law at the very initial stage of the suit when even replication has not been filed*

¹ MANU/DE/2976/2005



as yet, it would neither be just and proper to deny the relief of amendment prayed for by the applicant/plaintiff.”

[Emphasis Supplied]

7. The other objection taken by the Petitioner before this Court that the suit is barred by the provisions of Section 50 of the DRC Act, was also taken before the learned Trial Court as well. The learned Trial Court has examined this objection and found that while the suit was filed for recovery of possession of ground, first, second and third floor of the premises-in-issue, the admission in relation to which the rental was stated as being Rs.45/- per month, was the first floor of the premises-in-issue. Thus, it was held by the learned Trial Court that the suit would be barred by the provisions of Section 50 of the DRC Act. It is apposite to extract paragraph 7 of the Impugned Order in this behalf:

“7. On perusal of the plaint, it is quite apparent on the averments made by the plaintiff that the first floor of the suit property was given over on tenancy to the defendants at the rate of Rs.45/- per month and even in the relief clause No.(a) decree of possession is sought from such tenant for first floor along with second and third floor of the suit property. On the plain reading itself, it is very clear that relief clause No.(a) is barred by Section 50 of Delhi Rent Control Act, 1958. Although, plaintiff has also sought possession of ground floor, second floor and third floor of the suit property, however, in relation to such floors plaintiff has averred that defendants are in illegal and unauthorized possession and are living without the consent of the plaintiff/landlord of the suit property i.e. neither as a tenant nor as a licensee. Although, for the purpose of possession of these floors i.e. ground floor, second floor and third floor, the value of court fees appears to be deficit. However, it is a settled proposition of law that a plaint cannot be rejected in part and it can be wholly rejected or accepted. Hence, in light of the above observations, present application stands dismissed”

[Emphasis Supplied]

8. It is not disputed that the Respondent/Plaintiff filed a composite suit for recovery of possession for the ground, first, second and third floor of the premises-in-issue and for recovery of arrears of rental and damages for all



these years. As stated above, admission *qua* the rental being Rs.45/- per month was with respect to the first floor of the premises-in-issue.

9. Section 3(c) of the DRC Act states that the DRC Act shall not apply to the premises whose monthly rent exceeds Rs. 3,500/-. Section 50 of the DRC Act states that the jurisdiction of the Civil Courts is barred in respect of any matter which the learned Rent Controller is empowered to decide. It is apposite to set out the relevant extract Section 3(c) and Section 50 of the DRC Act below:

“3. Act not to apply to certain premises — Nothing in this Act shall apply—

...

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or

xxx

xxx

xxx

xxx

*50. Jurisdiction of civil courts barred in respect of certain matters — (1) Save a otherwise expressly provided in this Act, **no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.**”*

[Emphasis Supplied]

9.1 A conjoint reading of these Sections show that where the rental for the premises in issue is Rs. 3,500/- or less, the proceedings will be barred under the DRC Act. It has been stated that the Petitioners are in illegal and unauthorized possession of the first, second and third floor. The prayers in the suit clearly set out that the prayer (b) of the plaint is for recovery of arrears of rental of the first floor of the premises-in-issue at the rate of Rs. 45/- per month in the following terms:

“b) a Decree recovery of Rs. 1920/- as arrears of rent at Rs. 45/- per month



for the first floor ,premises of the aforesaid property for three years ending with 31.12.2016 be passed in favour of the plaintiff and. against the defendants. Further a decree in the sum of Rs. 2,00,000/- towards damages for two months from 1,1.2017 to 28.02.2017 in respect of first floor, second floor and third floor of the aforesaid property may kindly be passed in favour of the plaintiff and against the defendants.”

Thus, this prayer is clearly barred by the provisions of the DRC Act.

10. The learned Trial Court has dismissed the Application under Order VII Rule 11 of the CPC in view of the fact that the plaint cannot be rejected in part,

11. This Court while sitting in the Division Bench has in the case of *Navigators Logistics Ltd. v. Kashif Qureshi & Ors.*², while relying on the judgement of the Supreme Court in *Sejal Glass Limited v. Navilan Merchants Private Limited*³ has held that Order VII Rule 11 of CPC refers to "a plaint" and that necessarily means the plaint as a whole. It has been held that it is only where a plaint as a whole does not disclose a cause of action, the provisions of Order VII Rule 11 of CPC can be made applicable. It was further held that there is no provision in the CPC for rejection of a plaint in part. The relevant extract of the *Navigators Logistics Ltd.* case is reproduced below:

“ 42. The Supreme Court in Sejal Glass Limited v. Navilan Merchants Private Limited [(2018) 11 SCC 780] has held that Order VII Rule 11 of CPC refers to "a plaint" and that necessarily means the plaint as a whole. It has been held that it is only where a plaint as a whole does not disclose a cause of action, the provisions of Order VII Rule 11 of CPC can be made applicable. It was further held that there is no provision in the CPC for rejection of a plaint in part. The relevant paragraphs of the said judgment are as follows:

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"3. In our view, the impugned judgment [Navilan Merchants (P) Ltd.

² 2024 SCC OnLine Del 8244

³ (2018) 11 SCC 780



v. *Sejal Glass Ltd.*, 2016 SCC OnLine Del 6580] is wrong on principle. Order 7 Rule 11 of the Code of Civil Procedure, 1908 which reads as follows:

"11. Rejection of plaint. - The plaint 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 plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply 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 papers 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 for correcting the valuation or supplying the requisite stamp papers, 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."

What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.

4. It is settled law that the plaint as a whole alone can be rejected under **Order 7 Rule 11. In Maqsud Ahmad v. Mathra Datt & Co.; [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337 : AIR 1936 Lah 1021]**, the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms: (AIR p. 1022 para 4 : SCC OnLine Lah para 4)

"4. ... There is no provision in the Civil Procedure Code for the rejection of a plaint in part, and the note recorded by the trial court does not, therefore, amount to the rejection of the plaint as contemplated in the Civil Procedure Code."

[Emphasis is ours]

12. Thus, the finding of the learned Trial Court to the extent that Order VII Rule 11 of the CPC does not permit rejection of the Plaint in part is in



accordance with law.

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 has exercised 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 & 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 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 examination by this Court, as set out above, does not show either material irregularity or absence of jurisdiction.

15. The Petition is accordingly dismissed. The pending Application stands closed. The interim order stands vacated.

⁴ (2017) 14 SCC 132



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16. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of the parties are left open.

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

TARA VITASTA GANJU, J

APRIL 7, 2025/jn/r

Click here to check corrigendum, if any