



2025:DHC:3669



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:13.05.2025

+ **C.R.P. 200/2024 & CM APPL. 37751/2024**

DEVENDER SINGH

.....Petitioner

versus

DILIP KUMAR

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Kirti Uppal, Sr. Adv. with Mr. Shekhar Dasi, Mr. Mohd. Talha, Mr. Ayush Dassi & Mr. Deepesh Kasana, Advs.

For the Respondent : Mr. Gaurav Kumar, Mr. Raj Kapoor & Mr. Vicky Kaur, Advs.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the order dated 16.04.2024 (hereafter '**impugned order**'), passed by the learned District Judge, in CS DJ 206/17, whereby the application filed by the petitioner/ defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') was dismissed.



2. The suit was filed by the respondent/ plaintiff for recovery of a sum of ₹1,44,55,000/- along with *pendent-lite* and future interest at the rate of 18% p.a. on the said amount, from the date of filing the suit till its actual realization. The plaintiff claimed that the defendant had concealed pending litigation with regard to the premises and had violated the Agreement to Sell dated 11.01.2016 towards which he paid a total sum of ₹69,50,000/- to the defendant and further ₹5,55,000/- towards the purchase of the e-stamp paper.

3. It is claimed that the plaintiff entered into the Agreement to Sell dated 11.01.2016 with the defendant in respect of the first and second floor with roof rights of the property bearing Mpl No. N-33, Dr. Mukherjee Nagar, Delhi-9 (hereafter '**premises**'), for a sum of ₹1,01,00,000/-, for which he paid a sum of ₹26,00,000/- as earnest money. It is stated that the defendant had assured the plaintiff of removing the present occupant/ tenant namely– Sheela from the said premises, however, after the execution of the Agreement to Sell, when the plaintiff visited the premises he found that not only was the occupant not removed from the said premises, he was informed by the owner of the ground floor of the said premises namely– Subhash Dhingra, that he had also entered into a Sale Agreement for the same premises with the defendant. Pursuant to this, the plaintiff got registered a complaint *vide* DD No. 22B dated 15.01.2016. It is stated that the plaintiff also sent a legal notice dated 19.01.2016 to the occupant who apprised the plaintiff regarding the suit bearing CS (OS) No. 58/ 2011 pending before this Court.



4. It is stated that on the assurance given by the defendant that he would get the tenant/ occupant namely– Sheila to vacate the said premises at his own expense, the plaintiff agreed to make a further payment for a sum of ₹43,50,000/- on various dates and was persuaded by the defendant to enter into a Sale Deed in respect of the premises, in which the total sale consideration was mentioned as ₹92,50,000/-, since a sum of ₹8,50,000/- was paid by the plaintiff in cash which the defendant did not want to account for. It is claimed that parties executed the unregistered Sale Deed for which the plaintiff had purchased an e-stamp paper for a sum of ₹5,55,000/- and further issued three cheques bearing Nos. 301609, 301608 and 301607 all drawn on Punjab National Bank R.P. Bagh, amounting to a sum of ₹31,50,000/- towards the remaining balance. It is stated that when the plaintiff enquired with the defendant as to when the occupant would vacate the premises, the defendant outrightly backed out on the pretext that he is awaiting the outcome of the pending litigation with the occupant before this Court with regard to the premises. It is stated that thereafter, the plaintiff, left with no option, gave instructions to his banker for “stopping the payment” in respect of the three cheques as mentioned above.

5. The application under Order VII Rule 11 of the CPC was filed by the petitioner for rejection of the plaint claiming that the suit is not maintainable.



6. It is the case of the defendant that the Agreement to Sell dated 11.01.2016 clearly indicates that there is a pending suit for possession with regard to the said premises. It was further claimed that as per clause 25 of the Sale Deed, the same shall stand cancelled in case any cheque is bounced and the property will revert back to the vendor along with the consideration paid by the plaintiff being forfeited.

7. The learned senior counsel for the petitioner submitted that it is the respondent's own admitted position that on feeling cheated he had served a legal notice dated 19.01.2016 upon the occupant, who further replied to the said legal notice disclosing the pendency of litigation, however the respondent, despite having knowledge of the same, executed the Sale Deed with respect to the property, on 26.09.2016 and made further payments.

8. He submitted that the Agreement to Sell dated 11.01.2016 already states that the petitioner herein is in constructive possession and not in actual possession and also page 5 of the said Agreement further makes it known to the respondent that a suit for possession is pending before this Court, therefore no cause of action arises.

9. He submitted that the learned District Judge erred in coming to the conclusion that the cause of action to file the plaint has arisen, as the defendant concealed the attachment of the premises which is evident from the perusal of the order dated 04.11.2015 passed by this Court in *Mohd. Sadqueen & Anr. v. Jaswant Singh* which entails that the suit property/ premises were attached *vide* order dated 12.01.2015.



He submitted that the petitioner was not part of the aforementioned matter and that he himself came to know about the said order in March, 2017.

10. He placed reliance on the judgement passed by this Court in ***J.D. Jain v. Sharma Associates : 2010 SCC OnLine Del 394*** wherein it was held that if on a plain reading of a plaint it is found to be vexatious and meritless, the Court should dismiss the same under Order VII Rule 11 of the CPC for lack of cause of action.

11. He further submitted that the respondent issued the three cheques despite knowing the same would get dishonoured, which shows the *malafide* intent of the respondent.

12. *Per contra*, the learned counsel for the respondent submitted that the present petition has been filed by the petitioner to delay the proceedings of the case and therefore it is liable to be dismissed.

13. He submitted that the plaint elaborately mentions the cause of action to file the suit. He submitted that in terms of the Sale Deed, the petitioner was to deliver peaceful physical possession of the premises to the respondent however even as on date, despite having received a sum of ₹69,50,000/- from the respondent, the occupant namely—Sheela has possession thereof. He further added that whether the said possession was offered by the petitioner to the respondent or not is a matter of trial, however the said premises being occupied by the occupant is an admitted position.



14. He submitted that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of Section 74 of the Indian Contract Act, 1872 are attracted and the party so forfeiting must prove the actual damage. He further submits that the breach of contract was on part of the petitioner and not the respondent.

15. I have heard the counsel and perused the record.

16. 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 very threshold, even 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 [Ref. ***Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366***].

17. In the impugned order, the learned District Judge has perused the plaint and attached documents to find that a *prima facie* case of accrual of cause of action has been made out by the plaintiff. The learned District Judge has also dealt with the argument of the petitioner in relation to disclosure of pending litigation in respect of the premises. The learned Trial Court took note of the fact that this Court has attached the suit property *vide* order dated 04.11.2015 in case titled ***Mohd. Sadqueen & Anr. v. Jaswant Singh***, which reflects



concealment on part of the petitioner regarding the attachment of the premises.

18. A bare perusal of the plaint shows that as per the plaintiff, the defendant concealed the attachment of the said premises *qua* the pending litigation and also violated the terms of the Agreement to Sell. As also rightly appreciated by the learned District Judge, for deciding an application under Order 7 rule 11 of the CPC, the Court only has to look into the averments in the plaint and attached documents. Thus, this Court finds no infirmity in the decision of the learned District Judge that the plaint mentions that the plaintiff has been cheated and therefore it cannot be said at this stage that the plaint is lacking cause of action.

19. The plaintiff in the present suit has stated that although the defendant has declared in para 9 of the Agreement to Sell that the premises are “free from all incumbrances”, nevertheless it also mentions that a suit for possession is pending before this Court. It is stated that after having executed the Agreement to Sell towards which a sum of ₹26,00,000/- was also paid as earnest money, it was found that the owner of the ground floor of the said premises namely— Subhash Dhingra, had also entered into a Sale Agreement for the suit property with the defendant. It is stated that despite the said factual position, the defendant not only sent legal notices to the plaintiff but also demanded the balance amount towards the purchase.



20. It is stated that on being persuaded by the defendant, the parties executed the Sale Deed on which the plaintiff paid another sum of ₹43,50,000/- to the defendant, and further paid a sum of ₹31,50,000/- through three cheques bearing Nos. 301609, 301608 and 301607. The plaintiff relied on clause 4 of the Sale Deed, which states that “*the vendor confirms that they have handed over vacant and peaceful possession of the said property under sale to the vendee on the spot*”. It is stated in the plaint that despite assuring the plaintiff that he would get the occupant to vacate the premises, the same was not done by the defendant. It is stated that when the defendant failed to deliver the peaceful possession of the premises, the plaintiff gave instructions to his banker to stop the payment, which lead to the dishonor of the aforementioned three cheques.

21. The plaintiff has also relied on para 11 of the Agreement to Sell, wherein it is stated that if the first party fails to complete the formalities on his part in respect of the transaction, the plaintiff will be at liberty to either get the sale effected through Court or get double the amount of money paid, and therefore he is entitled to recover a sum of ₹1,44,55,000/- from the defendant.

22. In contrast, the defendant argued that the pendency of litigation with respect to the premises was already in the knowledge of the plaintiff, as it was mentioned in the Agreement to Sell that a suit for possession is pending before this Court, and therefore, the suit for recovery filed by the plaintiff is vexatious and is liable to dismissed



for lack of cause of action. It is further argued that the plaintiff failed to make the complete payment towards the purchase and therefore the Sale Deed stands cancelled and the amount paid by the plaintiff stands forfeited. He stated even the cheques issued by the plaintiff were dishonored, which shows that he did not have *bonafide* intention. He relied on clause 25 of the Sale Deed, which states that the transaction shall stand cancelled in case any cheque is bounced and the property will revert back to the vendor along with the consideration paid by the plaintiff being forfeited. It is stated that in this regard a Legal Notice dated 23.12.2016 was issued upon the plaintiff to forfeit the amount, which was never replied to by the plaintiff. The petitioner prays that the suit be dismissed for no cause of action.

23. In this regard, the learned District Judge rightly noted that the pleas made by the parties would require evidence as it is the case of the plaintiff that the payment of cheques was stopped to save his money, as soon as he became aware of the fraud committed by the defendant.

24. It also pertinent to note that the amount being claimed by the plaintiff to have been paid to the defendant, is higher than what is admitted by the defendant. It is the case of the plaintiff that he had also made few payments in cash, which the defendant does not want to account for. In such circumstances, the matter would require consideration of evidence and warrants a trial.



25. Even so, the arguments on behalf of the petitioner that the plaintiff had knowledge of the pending litigation with regard to the premises, and that he has violated the terms of payment of the Sale Deed, are in the nature of a defence and it is not open to the Court to venture into the defence of the defendant at the stage of adjudicating an application under Order 7 Rule 11 of the CPC. As noted above, at this stage, only the averments made in the plaint are relevant. The plaintiff has been able to *prima facie* show that he has paid a sum of ₹69,50,000/- to the defendant and further ₹5,55,000/- towards the purchase of the e-stamp paper in furtherance of the purchase of the premises, and that despite entering into a Sale Deed, he has not availed the possession thereof. The knowledge of the pending litigation or violation of the Agreement in the impugned transaction- is a mixed question of law and fact, which cannot be conclusively determined without a full-fledged trial.

26. The Hon'ble Apex Court in *Shakti Bhog Food Industries Ltd. v. Central Bank of India & Another* : (2020) 17 SCC 260, summarised the scope of power with a Court in rejecting a plaint under Order VII Rule of the CPC on grounds of limitation, where the dispute involves a mixed question of facts and law. The Hon'ble Court held as under:

“22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the



appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.”

27. The learned District Judge has rightly acknowledged in the impugned order that when there is a mixed question of fact and law, the same has to be determined after parties lead their evidence. The assertions made by the plaintiff cannot be rejected in the application under Order VII Rule 11 of the CPC.

28. Thus, this Court is of the view that the plaint discloses a cause of action which cannot be shut out at the threshold. The learned District Judge acted within its jurisdiction in refusing to reject the plaint and in holding that the parties will have the opportunity to prove their case during evidence.

29. It is well settled that the High Courts, while exercising its revisional jurisdiction under Section 115 of the CPC, cannot interfere in the absence of any jurisdictional error or perversity in the trial court's order.



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30. The present petition is dismissed in the aforesaid terms. Pending application also stands disposed of.

MAY 13, 2025

AMIT MAHAJAN, J