

CS No. **1544**/16

26.11.2019

Present: Sh. Parnav Verma, Ld. Proxy Counsel for the plaintiff
along with plaintiff.

Sh. Amol Chatarvanshi, Ld. Counsel for the defendant.

An application under Order 7 Rule 11 CPC has been moved on behalf of defendant. Copy supplied.

Arguments on the said application heard and record perused.

Order 7 Rule 11 of the Code, inter alia, mandates rejection of plaint where the plaint does not disclose cause of action. An application under this provision is to be decided entirely on a perusal of plaint and documents filed along with it. Defence of the defendant is not relevant for the purpose of Order 7 Rule 11 of the Code nor can it be looked into.

In M/s Texem Engineering Vs. M/s. Texcomash Export, 179 (2011) Delhi Law Times 963, it has been held by the Hon'ble High Court of Delhi that *"There can be no gainsaying that an application under Order VII Rule 11 of the CPC for rejection of the plaint has to be decided entirely on a perusal of the plaint and documents filed along with it"*.

In the instant matter, rejection of plaint has been sought on the ground that the plaintiff is contesting this case on wrong facts and he has illegally occupied DDA land and

generating wealth from it. Reliance has been placed upon the order of Ld. CMM passed in Complaint Case No. 46919/16, dated 08.03.2019 and 16.09.2019. A careful and meaningful reading of the plaint reveals that the instant is a suit for recovery of possession, arrears of rent, mense profits and damages brought by a landlord against his tenant. Rent agreement dated 17.11.2004 was duly executed between the parties. A decree of possession under Order 12 Rule 6 CPC has already been passed against the defendant by Ld. Predecessor vide order dated 31.07.2015. In the instant suit, the court has to primarily ascertain the existence of jural relationship of landlord – tenant between the parties and the default in payment of rent if any by the defendant. A roving inquiry into the title of the plaintiff is not required. On the one hand, the defendant has alleged in the instant application that the suit property belongs to DDA whereas the defendant himself has filed an affidavit dated 29.11.2005 wherein the defendant has stated that the suit property does not fall within DDA land. The application under Order I Rule 10 CPC for impleadment of DDA and MCD as party has already been dismissed by Ld. Predecessor. The court prior to decreeing the relief of possession under Order 12 Rule 6 CPC, would have firstly ascertained that the plaint prima facie discloses cause of action and the essential ingredients of suit for possession exists in the instant case, thereafter, the relief of possession must have been decreed in favour of plaintiff. The order dated 31.07.2015 was challenged by the defendant before

Hon'ble Delhi High Court, however, the appeal was dismissed. A meaningful reading of the plaint reveals that the plaintiff does have a subsisting cause of action for instituting the present suit. The only motive behind moving the instant application appears to be adoption of dilatory tactics as the matter is listed for cross examination of PW-1 since 21.07.2018 and adjournment has been sought by the defendant on one ground or the other. The application in hand is devoid of merits and is accordingly, dismissed.

Last and final opportunity is granted to the defendant to conclude entire cross examination of PW-1 positively by next date of hearing.

Re-list the matter for conclusion of cross examination of PW-1 on 30.11.2019. The matter is listed on saturday as per the request of Id. Counsel for defendant.

(Shuchi Laler)
ADJ-04(East District) KKD
Delhi/26.11.2019