

27.05.2025

Present: Sh. Yogeshwar Singh, Ld. proxy counsel for plaintiff.
Ld. counsel for D-1 through VC.
Sh. Vivek Mishra, Ld. counsel for D-2 and D-3.

1. No reply to the application of D-1 moved u/O VII Rule 11 CPC filed by plaintiff. Right to file the said reply is closed.
2. This is the second application moved by D-1 under the aforesaid provision seeking rejection of plaint. The first application of D-1 was dismissed by this court vide order dated 07.08.2024. After the dismissal of the said application, D-1 has moved the present application on 21.10.2024.
3. It is argued on behalf of D-1 that the contention taken in the earlier application was different from the contention taken in the present application. But, he does not dispute the fact that contentions taken in both the applications were available with D-1 at the moving of first application itself. He does not specify the reason as to why all the contentions qua Order VII Rule 11 CPC were not taken in a single application by D-1 and why a piece-meal approach is being adopted by D-1 for raising objections to the plaint. It appears that such piece-meal approach is being adopted only to delay the matter.
4. It is settled law that principles of constructive resjudicata are applicable even to interlocutory applications and in case the contention which could be taken earlier was omitted to be taken in the first round, the same contention cannot be canvassed by a second application.
5. Even if the above is over-looked, in my humble opinion, the present application is misconceived. D-1 contends in the present application that the present plaint is liable to be rejected on the ground that plaintiff has

approached this court for a decree of possession u/s 6 of Specific Relief Act and has also sought relief of permanent and mandatory injunction in the same plaint. It is argued that while there is no appeal qua a decree passed u/s 6 of Specific Relief Act, an appeal lies qua a decree of permanent and mandatory injunction. Thus, on the said count, as per applicant/D-1, the present plaint is liable to be rejected.

6. D-1 has not cited any case law in support of the said contention. Only because the remedy of appeal is not available with respect to a decree passed u/s 6 of Specific Relief Act shall not mean that other reliefs (qua which an appeal lies) cannot be asked together. **A perusal of plaint herein would show that the relief of mandatory and permanent injunction sought in the present suit are essentially consequential reliefs which would depend on the grant of main relief of possession in this suit.** If that be the case, in my humble opinion, the application is misconceived and is aimed at delaying the present matter.
7. Accordingly, the present application is dismissed with cost of Rs.10,000/- to be paid to plaintiff.
8. Parties are directed to file affidavits of admission/denial within 15 days from today with advance copy to other side.
9. To come up for admission/denial and framing of issues on 22.07.2025.

AASHISH GUPTA
DJ-01/NE/KKD/DELHI
27.05.2025