

CS DJ 59379/16
VRIJ MOHAN PAWAR Vs. SUSHIL WALIA

08.09.2022

Present: Sh Rakesh Nautiyal, ld. counsel for plaintiff.
None for defendant.

Heard. Perused.

Be awaited for second call.

(Surender Mohit Singh)
ADJ-04, North, Rohini Courts,
Delhi/08.09.2022

At 12:15PM.

Present: Sh Rakesh Nautiyal, ld. counsel for plaintiff.
None for defendant.

Heard. Perused.

This is second call.

It is stated by ld counsel for the plaintiff that one application u/o VII Rule 11 CPC is pending since 2018 for disposal.

It is stated that plaintiff does not want to file any reply as the application has no merit.

The contents of the application u/o VII Rule 11 CPC dt 05.12.2018 perused.

As per the application, it is stated by the counsel for the defendant that there is no cause of action in the present suit and the suit of the plaintiff is based on bald statement with no supportive documents relating to the issues concerned. It is further stated that the plaintiff relied only on the pass book

entries to substantiate its stand in the pleadings. It is further stated that the cheque in question is also not related to the parties to the suit nor any liability can be drawn against the defendant. Further the drawer and drawee had not concern or relation to the present suit. It is prayed that present application may kindly be allowed and suit may kindly be dismissed as there is no cause of action.

Per contra, it is argued by Id counsel for the plaintiff that the suit of the plaintiff is for a recovery of money advanced by the plaintiff to the defendant. It is further stated that both plaintiff and defendant are known to each other and a friendly loan of Rs.1,50,000/- with interest @ 24% p.a. was given by the plaintiff to the defendant on his request in June 2013. Further, plaintiff advanced a loan of Rs.50,000/- in February, 2014 at the request of defendant. After several persuasion by plaintiff, defendant never returned the loan amount however, due to the intervention of friends of defendant, defendant issued a cheque of Rs.8,000/- from account of his wife Ms Monika Walia with assurance that he shall pay the entire loan amount of Rs.2,00,000/- with interest till March, 2015 on or before 30.06.2015. It is further stated that defendant again committed fault and did not pay the loan amount in June 2015. Thereafter, with no option left, plaintiff sent a legal notice dt 14.07.2015 to the defendant demanding Rs.2,88,000/- with interest @ 24% p.a., which was duly served. On receiving the said notice, defendant approached the plaintiff with a settlement proposal to settle the loan account through their common friends in Rs.2,00,000/- without interest. The said proposal was rejected by the plaintiff. Thereafter, defendant is avoiding his liability to pay the loan to the plaintiff on the one pretext or another. It is further stated

thereafter the plaintiff filed the present suit for recovery of loan amount with interest. It is stated by Id counsel for the plaintiff that all the averments regarding the cause of action has been clearly mentioned in para no.6 of the plaint. It is prayed that present application is devoid of merits and may kindly be dismissed with exemplary cost.

I have perused the entire record carefully. Submissions heard on behalf of plaintiff.

In **Dahiben vs Arvindbhai Kalyanji Bhanusali 2020 SCC Online SC 562**, the Hon'ble Supreme Court clarified that 'Courts while dealing with such an application seeking rejection of plaint, ought to determine whether the plaint discloses the cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. In this regard, it also clarified that while making the such determination, the courts would have to disregard the pleas taken by the defendant in the written statement and application in rejection of the plaint on merit. Hon'ble Supreme Court further clarified that while determining an application u/o VII Rule 11 CPC, the Courts are restrict itself to the plaint and are not to go into the detailed facts as provided in the written statement or in the application u/o VII Rule 11 CPC.

The Hon'ble Supreme Court reiterated that test laid down in **Liverpool & London S. P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512**, inter alia, provides that whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. In other words, the plaint has to be construed as it stands,

without addition or subtraction of words. The Hon'ble Supreme Court has clarified that power of court u/o VII Rule 11 CPC are mandatory in nature and may be exercised it at any stage of the suit either before registering the plaint, or after issuance of summons to defendants or before conclusion of the trial. While exercising the power u/o VII Rule 11 CPC the court cannot go into the merit of the case and has to make determination only from the scrutiny of the averments made out in the plaint, which is presumed to be true. Where the plaint prima facie shows cause of action, then the plaint should not be rejected. Hence, while exercising the power u/o VII Rule 11 CPC, the decision must be taken with due consideration and facts and circumstances.

Keeping in view the observations and direction laid down by the Hon'ble Supreme Court in the aforementioned case, simple averment that the suit is based on false, vague and baseless facts is not a ground of rejection of plaint.

Hence, I am of the considered view that in the plaint there are sufficient facts to describe the cause of action and the present application is devoid of merits and deserves to be dismissed. Accordingly, **the present application u/o VII Rule 11 CPC is hereby dismissed and disposed of.** Cost of Rs.5,000/- is also awarded in favour of the plaintiff.

Put up for PE/reply and arguments on application u/o XII Rule 6 CPC on **14.10.2022.**

Steps be taken for summoning of witnesses.

(Surender Mohit Singh)
ADJ-04, North, Rohini Courts,
Delhi/08.09.2022