

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-02:
NORTH ROHINI COURTS COMPLEX: DELHI**

IN THE MATTER OF:-

CS DJ No.361 – 2022
NASEEB SINGH vs. RAJ KUMAR

06.02.2024

ORDER ON APPLICATION

1. Vide this order, court shall dispose of an application u/o VII Rule 11 CPC moved on behalf of the defendant dated 20.03.2023.

APPLICANT / DEFENDANT'S CASE

2. It is the case of the defendant that in the amended plaint dated 06.06.2023 in para No.3, the suit property i.e. built up property measuring 232 sq. yds., out of Khasra No.192, Village Mukundpur, Delhi abadi known as B-Block, Mukanpur Extension, Delhi, Part – II, Delhi – 110042 as shown in Red colour in the site plan, whereas plaintiff claims to have let out ground floor portion of the suit property without roof rights. It is argued that the annexure 'A' site plan comprises of all the floors shown in Red colour and hence, the averments are contrary.
3. It is further argued that in the rent agreement dated 25.04.2017, it is averred that Naseeb Singh rented out Raj Kumar, property Khasra no. 192, B Block, Mukund Pur Extension, Part- II, Delhi. It is argued that the description of the suit property does not match with the property given on rent.
4. It is further argued that in para No.6, it is stated that after 24.03.2018, defendant did not pay rent. The case filed now, is delayed.

PLAINTIFF'S CASE

5. Firstly, it is argued by the counsel for the plaintiff that the suit property is shown in Red colour and the portion given on rent is specifically mentioned in para no.3 of the plaint. It is further argued that only averments in plaint are to be seen at this stage.
6. Secondly, it is argued by the counsel for the plaintiff that Plot number is specifically given in the rent agreement dated 25.04.2017 and the portion given on rent specifically is mentioned in para no.3 of the plaint. He argues that plaint cannot be rejected as being without cause of action as in the prayer clause also specific portion given on rent is mentioned in the prayer clause of the amended plaint.
7. Thirdly, it is argued by the counsel for the plaintiff that limitation is mix question of law in fact and further argued that the prayer for recovery of Rs.5,55,000/- is for recovery of three years rent which is within limitation.
8. No other point was argued by either of the counsels.

9. SCOPE OF INTERVENTION BY COURT :

13. Instead of referring to all the judicial precedent laid down by the apex court in this regard, it would be apposite to refer to the case of Saleem Bhai v. State of Maharashtra, reported in (2003) 1 SCC 557. The Hon'ble Supreme Court, while discussing the

factors to be considered by the Courts in exercise of power under ORDER 7 Rule 11 CPC, has held that:

“8. Order 7 Rule 11 CPC reads as under:

“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.”

9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

10. APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF PRESENT CASE ;

This court has heard the rival submissions of the parties and perused the relevant record with their assistance. In opinion of the court, the

application u/o 7 Rule 11 CPC deserves to be dismissed on following grounds :

a. The plaintiff has filed the suit for Possession, Permanent and Mandatory Injunction and for Recovery of Rent on the ground that plaintiff had let out ground floor without roof rights (except two shops in front) from built up property measuring 232 sq. yds., out of Khasra No.192, Village Mukundpur, Delhi (herein after referred to a suit property). After 24th, March, 2018, defendant did not pay rent. Tenancy was determined by legal notice and hence, the present suit with the relief of possession, prayer for money decree of Rs.5.5 lacs is made. When the plaint is read as a whole, it cannot be said that the plaint is without cause of action.

b. It is rightly argued by the counsel for the plaintiff that the suit property is shown in Red colour and the portion given on rent is specifically mentioned in para no.3 of the plaint. It is further rightly argued that only averments in plaint are to be seen at this stage.

c. It is rightly argued by the counsel for the plaintiff that Plot number is specifically given in the rent agreement dated 25.04.2017 and the portion given on rent specifically is mentioned in para no.3 of the plaint. He has further rightly argued that plaint cannot be rejected as being without cause of action as in the prayer clause also specific portion given on rent is mentioned in the prayer clause of the amended plaint.

d. It is rightly argued by the counsel for the plaintiff that limitation is mix question of law in fact and further argued that the prayer for

recovery of Rs.5,55,000/- is for recovery of three years rent which is within limitation.

e. The other point taken in application u/o 7 Rule 11 CPC which pertains to running of shops as alleged being imaginary, GPA, Agreement to Sell and Affidavit being false documents were not argued before the court. These are in any case, defences available to the defendant and cannot be a ground for rejection of plaint at this stage. These grounds require trial and evidence.

11. CONCLUSION :

In totality of circumstances, the application u/o VII Rule 11 CPC by the defendant is dismissed. However, nothing stated in the order shall affect the merits of the case.

Announced in the open Court.
(Order contains 5 pages)

(Vikram Bali)
Addl. District Judge-02, North
Rohini Court Complex, Rohini
Delhi/06.02.2024