

**IN THE COURT OF DISTRICT JUDGE-2:
NORTH ROHINI COURTS COMPLEX: DELHI**

IN THE MATTER OF:-

**CNR No. DLNT01-008425-2016
CS DJ No. 60108/2016**

Davinder Singh

....Plaintiff

Versus

Meeu Kapoor

.....Defendant

10.03.2025 (At 04.00 pm)

Present: None.

ORDER ON APPLICATION

1. Vide this order, Court shall dispose of an application u/o VII Rule 11 CPC supported by an affidavit dt. 19.10.2024 filed by the defendant/applicant.

CASE OF PARTIES

2. Counsel for the defendant contends that present suit has been filed for specific performance, permanent and mandatory injunction.

3. Counsel for the defendant contends that suit property is property bearing No. 1748, Ground Floor, Outeram Lines, Kingsway Camp, Delhi build on land measuring 160 sq. yards (hereinafter referred to as suit property). Defendant is a seller. Plaintiff is purchaser.

4. Counsel for the defendant argues that averments in para 8 & 9 of the plaint, are false. No reason for extension of time of 15 days is mentioned by the plaintiff. Per contra, counsel for the plaintiff contends that initially, agreement dt. 23.04.2008 was entered into. Thereafter, extension agreement dt. 28.08.2009 was entered into. Part payments were made of Rs.31,51,000/-. The target date was 20.11.2009. Plaintiff was ready with Rs.51,00,000/- on 20.11.2009 and thus, on refusal of defendant to execute sale deed. Cause of action arose.

5. Counsel for the defendant further argues that the target date for execution of Sale Deed and payment of balance consideration, was 20.11.2009. Legal notice was given only on 01.02.2010, which is after delay of approximately two months.

6. Counsel for the defendant argues that in case titled *T. Arivandandam Versus T.V. Satyapal and Another, reported in (1977 4 Supreme Court Cases 467)*, it has been laid down that by clever drafting, cause of action cannot be created.

SCOPE OF INTERVENTION BY COURT :

7. 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:

“Order VII Rule 11 C.P.C. 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 by the plaintiff 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, failed 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-paper 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 for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff."

A perusal of Order VII Rule 11 C.P.C 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 VII Rule 11 C.P.C 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 VII C.P.C, 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 VII Rule 11 C.P.C. 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."

APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF PRESENT CASE:

8. This court has heard the rival submissions of the parties and perused the relevant record with their assistance. The Court has considered rival submissions and perused the case record.

9. Perusal of the record shows that present suit has been filed for specific performance, permanent and mandatory injunction. Perusal of record shows that suit property is property bearing No. 1748, Ground Floor, Outeram Lines, Kingsway Camp, Delhi build on land measuring 160 sq. yards (hereinafter referred to as suit property). Defendant is a seller. Plaintiff is purchaser.

10. The submissions on behalf of defendant that averments in para 8 & 9 of the plaint, are false and further submission that no reason for extension of time of 15 days is mentioned by the plaintiff, will be a moot point during trial. At this stage, only averments in plaint are to be seen. The submissions on behalf of counsel for the plaintiff that initially, agreement dt. 23.04.2008 was entered into. Thereafter, extension agreement dt. 28.08.2009 was entered into. Part payments were made of Rs.31,51,000/-. The target date was 20.11.2009. Plaintiff was ready with Rs.51,00,000/- on 20.11.2009 and thus, on refusal of defendant to execute sale deed, so cause of action arose is sufficient to disclose cause of action. At this stage, only plaint is to be seen. The truth or otherwise of the averments made, will be a moot point during the trial.

11. The further submissions by counsel for the defendant that the target date for execution of Sale Deed and payment of balance consideration, was 20.11.2009 and Legal notice was given only on 01.02.2010, which is after delay of approximately two months, so plaintiff be rejected, is without merits. These submissions are rejected. At this stage, only plaintiff is to be seen. The truth or otherwise of the averments made, will be a moot point during the trial.

12. There is no dispute with the proposition of law laid down in case titled *T. Arivandandam Versus T.V. Satyapal and Another, reported in (1977 4 Supreme Court Cases 467)*, wherein it has been laid down that by clever drafting, cause of action cannot be created, but the same is not applicable in facts of present case. In the present case, there are specific averments that initially, agreement dt. 23.04.2008 was entered into. Thereafter, extension agreement dt. 28.08.2009 was entered into. Part payments were made of Rs.31,51,000/-. The target date was 20.11.2009. Plaintiff was ready with Rs.51,00,000/- on 20.11.2009 and thus, on refusal of defendant to execute sale deed, so cause of action arose is sufficient to disclose cause of action. At this stage, only plaintiff is to be seen. The truth or otherwise of the averments made, will be a moot point during the trial.

CONCLUSION :

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

14. Application stands dismissed.

Put up on arguments on application u/s 151 CPC on **05.05.2025**.

(Vikram Bali)
District Judge-2, North
Rohini Court Complex, Rohini
Delhi/10.03.2025