3 Counter Claim 10/20
IA No. 1/26
SUBHAS DIWAN V. SUNIL DIWAN

23.05.2026
All the proceeding conducted through VC.
Present Shri Pankaj Gaba and Shri Harsh Kumar, Ld. Counsel for counter claimant.

Respondent with Ld. Counsel Shri Gurjeet Singh.

Ld. Counsel for the counter-claimant has filed amended memo of parties.

Ld. Counsel for the counter-claimant submits that he has already filed his written synopsis.

Arguments on the application under Order VII Rule 11 CPC has already been heard.

Order on application under Order VII Rule 11 CPC

By way of the present order, this Court shall decide an application filed by respondent (plaintiff in the main suit)/Applicant, namely Subhash Diwan, under Order VII Rule 11 read with Section 151 CPC seeking rejection of the counterclaim preferred by defendant no.1 in the main suit /Counter-claimant Sunil Diwan.

Brief Background

The present suit was instituted by the plaintiff seeking partition, permanent injunction and consequential reliefs in respect of property bearing Shop No. B-4/1 comprising Shop No. 1 and Shop No. 2 situated at Ramesh Nagar, West Delhi, Delhi, asserting that the suit property was inherited from Late Sh. O.P. Dewan, who died intestate on 02.04.2001, and thereafter devolved upon his Class-I legal heirs.

During the pendency of the proceedings, defendant no.1 filed a written statement along with a counterclaim alleging, inter alia, that disputes had arisen between the parties concerning a business jointly conducted through Karms Advertising Agency Pvt. Ltd., and that pursuant to settlement of disputes, a Memorandum of Understanding dated 28.06.2012 and subsequently a possession letter/agreement dated 05.08.2017 were executed whereby the plaintiff allegedly agreed to transfer his one-third share in the suit property to Defendant No.1 in settlement of accounts.

By way of counterclaim, defendant no.1 sought relief of specific performance of the alleged agreement/possession letter dated 05.08.2017 directing the plaintiff to execute a registered sale deed/relinquishment deed in his favour, and alternatively sought recovery of monetary amounts allegedly siphoned off from the company along with interest.

The applicant/plaintiff has now moved the present application seeking rejection of the said counterclaim.

Contentions of the Applicant

Ld. Counsel for the applicant submits that the counterclaim is wholly misconceived and constitutes an abuse of process of law. It is contended that the counterclaim substantially concerns disputes pertaining to management, liabilities, functioning, and internal affairs of a company, namely Karms Advertising Agency Pvt. Ltd., and therefore the jurisdiction of the civil court stands barred by virtue of Section 430 of the Companies Act, 2013.

It is further argued that the allegations made in the counterclaim pertain to siphoning of company funds, dishonour of cheques, business losses, liabilities of directors, and alleged misconduct in management of company affairs, all of which fall within the exclusive jurisdiction of the National Company Law Tribunal (NCLT).

It is also argued that the company itself has not been impleaded as a party despite reliefs indirectly affecting its liabilities and affairs. According to the applicant, adjudication of such claims in absence of the company and other stakeholders is impermissible.

Ld. Counsel further submits that the alleged Memorandum of Understanding dated 28.06.2012 and settlement documents relied upon by the counterclaimant are unregistered, unenforceable and barred by limitation. It is argued that no enforceable right survives on the basis of such documents.

It is further contended that a preliminary decree of partition has already been passed recognizing the plaintiff's one-third share in the suit property and therefore the alleged settlement relied upon by the counterclaimant loses all efficacy.

Contentions of the Counterclaimant

Per contra, Ld. Counsel for the counterclaimant opposes the application and submits that the counterclaim discloses a valid cause of action and therefore cannot be rejected under Order VII Rule 11 CPC.

It is argued that the possession letter dated 05.08.2017 fulfills all essential ingredients of an agreement to sell as it records the parties, consideration, subject matter and reciprocal obligations. It is submitted that nomenclature of a document is immaterial and its legal character is to be determined from its contents.

The counterclaimant submits that the principal relief claimed in the counterclaim is specific performance of an agreement relating to immovable property arising out of a family settlement and not adjudication of oppression, mismanagement or winding up of a company.

Ld. counsel further submits that Section 430 of the Companies Act bars jurisdiction of civil Courts only in respect of matters specifically entrusted to the NCLT. Reliance is placed upon ***Dhulabhai vs. State of Madhya Pradesh (AIR 1969 SC 78), Jai Kumar Arya & Ors. vs. Chhaya Devi & Anr., FAO (OS) 253/2017 decided on 07.11.2017 and Naresh Dayal & Ors. vs. Delhi Gymkhana Club Ltd. CS (OS) 3444/2015 decided on 28.07.2025*** to contend that exclusion of civil jurisdiction cannot be lightly inferred.

Court observation and findings

While considering an application under Order VII Rule 11 CPC, the Court is required to examine only the averments contained in the plaint/counterclaim and the documents relied upon therein. The defence taken by the opposite party or disputed questions of fact are wholly irrelevant at this stage. The Court is only required to ascertain whether the pleadings disclose a cause of action, whether the suit appears barred by law on the face of the pleadings, or suffers from any of the contingencies contemplated under Order VII Rule 11 CPC.

It is equally well settled that for rejection under Order VII Rule 11(d) CPC, the bar of law must be apparent from a meaningful reading of the plaint/counterclaim itself and not upon a detailed enquiry into disputed questions of fact.

A. Whether the counterclaim is barred under Section 430 of the Companies Act

The principal objection raised by the applicant is that the counterclaim concerns disputes relating to a company and therefore falls within the exclusive jurisdiction of the NCLT. This contention does not merit acceptance in the facts of the present case.

A meaningful reading of the counterclaim reveals that although several allegations have been made concerning conduct of parties in relation to Karms Advertising Agency Pvt. Ltd., siphoning of funds, liabilities and deterioration of business relations, the substantive relief claimed by the counterclaimant is enforcement of an alleged family settlement/possession letter dated 05.08.2017 in respect of the suit property.

The principal relief sought is a decree of specific performance directing execution of documents transferring the plaintiff's share in immovable property. Such relief pertains to enforcement of contractual and proprietary rights in immovable property and not to adjudication of oppression, mismanagement, rectification of company records, winding up, or any matter expressly assigned to the jurisdiction of the NCLT under the Companies Act.

Merely because the alleged agreement arose in the backdrop of settlement of business disputes between parties would not automatically convert the nature of the lis into a company petition.

Section 430 of the Companies Act bars jurisdiction of civil Courts only in matters which the Tribunal or Appellate Tribunal is empowered to determine under the Act. Exclusion of civil jurisdiction cannot be readily inferred in absence of an express or necessarily implied statutory bar.

At this stage, the Court cannot conclusively hold that the relief of specific performance of an alleged agreement relating to immovable property is one which the NCLT is competent to adjudicate.

Consequently, from a bare reading of the counterclaim, it cannot be said that the same is barred by Section 430 of the Companies Act so as to warrant rejection under Order VII Rule 11(d) CPC.

B. Whether the counterclaim discloses a cause of action

The counterclaim specifically pleads execution of an MOU dated 28.06.2012 and a subsequent agreement/possession letter dated 05.08.2017 whereby the plaintiff allegedly agreed to transfer his one-third share in the suit property to defendant no.1.

The counterclaim further pleads payment of Rs. 3,10,000/- by defendant no.1 towards settlement and alleges failure on the part of the plaintiff to perform reciprocal obligations despite repeated readiness and willingness of defendant no.1.

Whether such documents are legally enforceable, whether consideration passed, whether the agreement is genuine, or whether defendant no.1 remained ready and willing to perform his obligations are all disputed questions of fact requiring trial and evidence.

At this preliminary stage, the Court cannot embark upon adjudication regarding evidentiary value, legality or ultimate enforceability of the documents relied upon by the counterclaimant.

The averments contained in the counterclaim, if assumed to be correct for purposes of Order VII Rule 11 CPC, undoubtedly disclose a cause of action.

C. Objection regarding limitation

The contention that the alleged agreements are barred by limitation also cannot be conclusively determined at this stage. The question whether the counterclaim is within limitation would depend upon factual determination including the nature of obligations undertaken, date of refusal, continuing cause of action, and surrounding circumstances. A plea of limitation can justify rejection under Order VII Rule 11(d) CPC only where the bar is apparent ex facie from the pleadings themselves. In the present case, such conclusion cannot be arrived at without evidence and factual adjudication.

D. Effect of Preliminary Decree

The applicant has strongly relied upon the preliminary decree passed in the partition suit recognizing the plaintiff's one-third share in the property. However, the mere passing of a preliminary decree does not *ipso facto* extinguish an independent claim of specific performance if otherwise maintainable in law. The effect, legality and enforceability of the alleged agreement dated 05.08.2017 vis-à-vis the rights declared under the preliminary decree are matters to be adjudicated during trial of the counterclaim and cannot form a basis for rejection at threshold.

Conclusion

Upon meaningful reading of the counterclaim as a whole, the

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counterclaim cannot be rejected at the threshold under Order VII Rule 11 CPC. The counterclaim discloses a cause of action. Further, it cannot be said at this stage that the reliefs claimed are ex facie barred by law or fall exclusively within the jurisdiction of the NCLT. The objections regarding limitation, validity of documents, readiness and willingness, enforceability of settlement, and effect of preliminary decree involve mixed questions of fact and law requiring evidence.

It is a settled principle that disputed questions requiring appreciation of evidence cannot be decided in proceedings under Order VII Rule 11 CPC. Accordingly, the present application under Order VII Rule 11 read with Section 151 CPC seeking rejection of the counterclaim stands **dismissed.**

Nothing stated herein shall tantamount as an expression on merits of the counterclaim, and all observations made herein are confined solely to adjudication of the present application.

No WS of the respondent is on record.

Put up for filing affidavit regarding admission/ denial of document by both the parties with advance copy to the Ld. Counsel for opposite party/ framing of issues for 20.07.2025.

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SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/23.05.2026