

IN THE COURT OF SH. SHIV KUMAR  
DISTRICT JUDGE-02,  
WEST, DELHI.

RCA No. 48/24

CNR No. DLWT01-004415-2024

DLWT010044152024



Mrs Veena Bhasin  
W/o Shri R.C. Bhasin  
R/o MIG-462, Sector-10,  
Avas Vikas Colony,  
Agra, U.P.

..... Appellant

Versus

Ms Suruchi Bhasin  
W/o Shri Mohit Bhasin  
R/o C-120A, 2<sup>nd</sup> Floor,  
Ganesh Nagar, Tilak Nagar,  
New Delhi-110018  
(Mob. No. 8851634385)

.....Respondent

APPEAL UNDER SECTION 96 OF CPC AGAINST THE  
ORDER DATED 16.04.2024 PASSED BY THE COURT OF  
MS. DISHA SINGH, CIVIL JUDGE – 2, WEST, TIS HAZARI  
COURT, DELHI IN CASE BEARING SUIT NO. 1317 OF 2023  
TITLED AS VEENA BHASIN VS. SURUCHI BHASIN

**Date of institution of the appeal** : 18.05.2024  
**Date on which reserved for Judgment** : 07.04.2026  
**Date of pronouncement of Judgment** : 02.05.2026

### JUDGMENT

1. Vide this order, I shall decide appeal filed by the appellant under section 96 CPC for setting aside the impugned order dated 16.04.2024 whereby the ld. Trial Court has rejected the plaint of the Appellant under order 7 rule 11 CPC. The Appellant was plaintiff and the respondent was defendant in the suit filed before the Ld. Trial Court.

#### Brief facts of the case as per plaint of the Appellant/plaintiff

2. It is averred in the plaint that plaintiff is ailing and senior citizen of India and having fundamental and natural right to lead her life with dignity, honour and reputation. It is further averred that plaintiff was born on 17.09.1954 and is suffering from medical problem of Orthoritious.

3. It is further averred in the plaint that the plaintiff is the owner and in physical & lawful possession of property bearing No. C-120A, Second Floor, Ganesh Nagar, Tilak Nagar, New Delhi ( hereinafter referred to as ('the suit property')). It is further averred that all right of ownership and possession in respect of the suit property are vesting in the plaintiff. The plaintiff being the true and lawful owner and in physical and lawful possession of the suit property has every legal right, title

and interest to enjoy and use the suit property without any kind of hindrance and obstruction from any corner whatsoever. It is further averred that son of the plaintiff namely Mr. Mohit Bhasin was divorcee and the defendant was also divorcee.

4. It is further averred that marriage between the son of the plaintiff and defendant was solemnized on 19.04.2019 according to Hindu rites and ceremonies in a very simple manner at Arya Samaj Vedic Mandi, C Block Amar Colony, New Delhi-110024. It is further averred that plaintiff and her family member had not raised any demand of dowry, cash, costly articles, jewellery, costly articles and clothes or any other valuable or any other properties from the defendant and her relatives at any point of time and never caused any kind of harassment and torture to the defendant on any account whatsoever.

5. It is further averred that plaintiff had always given due respect and regard to the defendant and never interfered in the matrimonial life of the defendant and her husband at any point of time.

6. It is further averred that after the marriage, the plaintiff had allowed/permitted her son and defendant to reside in the suit property. It is further averred that defendant and her husband, just after the marriage, started residing in the suit property. It is further averred that from the wedlock of the above said marriage one male child namely Master Mivaan Bhain was born on 21.05.2021.

7. It is further averred in the plaint that in the first week of January, 2023 the defendant had started creating a continuous pressure, force and coercion upon the plaintiff and her son to transfer the suit property in her name otherwise she will transplant the false case of dowry and other kind of criminal proceedings upon the plaintiff, her husband and son and also giving treat to liquidate her life and life of minor child.

8. It is further averred that the defendant had created the continuous threat and danger to the precious life of the plaintiff, her son and minor child and had made the life of plaintiff, her son and minor child full of mental torture, pain, agony and suffering. It is further averred that defendant is woman of aggressive and violent nature. Whenever the plaintiff visits the suit property then the defendant uses abusive and filthy language against the plaintiff.

9. It is further averred in the plaint that in the month of February, 2023, the plaintiff visited at Delhi and had requested the defendant and her husband to vacate the suit property, on this the defendant and her husband had given assurance and promise to vacate the suit property upto 15.08.2023. It is further averred that defendant is giving the continuous threat to the plaintiff and her son that if the property in question is not transferred in her name then she will transplant a false case of dowry and other legal proceedings by misusing and abusing the law relating to women. The defendant does not have any legal right, title and interest in respect of the suit property.

10. It is further averred in the plaint that on 27.03.2023, when the son of the plaintiff with his minor son went to Agra in his parental house to see the sick father of son of the plaintiff, the defendant, for unknown reasons, has filed a police complaint before P.S. Tilak Nagar, against the son of the plaintiff. Thereafter, son of the plaintiff with his son and the defendant have been living separately due to bad behavior of the defendant toward the son of the plaintiff, his minor son and family. The minor son likes the company of son of the plaintiff and has been living with son of the applicant since separation at MIG-462, Sector-10, Avas Vikas Colony, Agra-282007.

11. It is further averred in the plaint that on 28.03.2023, the defendant has filed a false, fabricated and manipulated complaint before CAW Cell, Kirti Nagar, New Delhi vide complaint no. 582/23 against the plaintiff and her son in respect of issue of custody of minor child.

12. It is further averred that plaintiff is continuously requesting the defendant to vacate the suit property but the defendant is averting the matter on one pretext or other. It is further averred that the defendant is illegally and unlawfully retaining the suit property against the will and consent of the plaintiff and contrary to the wishes and desire of the plaintiff.

13. It is further averred that the defendant is not having any intention to vacate the suit property and to hand over and deliver the vacant possession of the suit property to the plaintiff. The

plaintiff due to problem of orthoritious and other old age disease wants to settle permanently in Delhi and wants to enjoy and use the suit property as the plaintiff being the owner of the suit property has right to enjoy the same and to remain therein.

14. It is further averred that plaintiff from her son has come to know that the defendant has instituted the civil suit bearing No. CS(OS)527/19 before the Hon'ble High Court of Delhi in respect of the property bearing no, D-35, Amar Colony, Lajpat Nagar-IV, New Delhi-110024 and commercial/shop admeasuring 17 sq. yards bearing property no. 99, Banarasi Das Building, Subhash Road, Ganesh Nagar, New Delhi against Rajiv Bajaj and Ors. Thereafter plaintiff mentioned the orders dated 02.06.2023 & 07.07.2023 passed by the Hon'ble High Court of Delhi in above mentioned suit. It is further submitted that son of the plaintiff has moved an application under order 1 rule 10 CPC in the civil suit, filed by the defendant.

15. It is further averred that now the defendant is having the resources of Rs. 45,00,000/- to arrange her own residential accommodation. It is further averred that possession of the defendant in respect of the suit property is possession of the plaintiff as the plaintiff only allowed the defendant and her husband to reside in the suit property as a status of licensee and permissive use and the same has been terminated by the plaintiff after 15.08.2023.

16. It is further averred in the plaint that plaintiff is having strong apprehension that the defendant may create a third party interest and part with possession of the suit property and may also sold the valuable household articles and also commit the theft of cash and jewellery of the plaintiff which is existing in almirah of the plaintiff.

17. The Id. Trial court summoned the defendant and defendant appeared in the Ld. Trial court on 23.12.2023. Vide order dated 07.02.2024, Id. Trial court granted 15 working days time to the defendant to file written statement. There is no written statement of defendant in Trial court record.

18. Vide order dated 16.04.2024, Ld. Civil Judge, rejected the plaint of the plaintiff under order 7 rule 11 CPC.

19. The appellant/plaintiff has filed the present appeal by taking following grounds:

a) That the Id. Trial court has failed to appreciate and give any valid rationale for rejecting the plaint of the plaintiff/appellant under order 7 rule 11. It is further contended that the Ld. Trial Court has failed to appreciate that the suit filed by the plaintiff/appellant, being the owner/licensor of the suit property seeking mandatory injunction against the defendant for removing herself from the suit property, was maintainable and the plaintiff/appellant had a valid and subsisting cause of action to bring the said lis to court. It is further contended that the court also failed to take into account that the plaintiff/appellant moved court seeking reliefs of mandatory injunction, inter alia, of the respondent/defendant till 15.08.2023 and relied upon the judgment titled Joseph Severance and Ors, Vs Benny Mathew and Ors ( 2005) 7 SCC 667, Sant Lal Jain, Vs Avtar Singh, 2 SCC 332.

b) That the Id. Trial Court has not appreciated the fact that the plaint has to read on demurre and the court cannot go beyond the pleadings of the plaint while considering the contours of order 7 rule 11 CPC.

c) That the Id. Trial Court has failed to appreciate that the appellant/plaintiff, as shown in the facts reproduced in para 4 of the present appeal had a valid and continuing/subsisting cause of action against the respondent/defendant.

d) That the Id. Trial Court has failed to consider that the cause of action in a suit is the bundle of all relevant facts and circumstances that the plaintiff is required to prove on preponderance of probabilities at the time of trial by leading evidence. It is further contended that the Id. Trial Court erroneously ventured into the stage of evidence by recording that “ no single document has been annexed with the plaint in support of these averments and allegations which questioned the conscience of this court that the plaintiff has in fact tried to create an illusion of the cause of action by making bald averments only and no iota of document on record.”

e) That the Id. Trial Court, apart from giving incorrect reasons to reject the various reliefs sought by the appellant in the plaint, has also failed to supply any reason as to why the suit for mandatory injunction against the respondent to remove herself from the suit property is not maintainable as such. It is submitted that it settled law that court cannot reject the plaint in a piecemeal manner. Either the plaint is to be rejected as a whole or the suit is to put to trial.

f) That Id. Trial Court has erred in finding that the appellant/plaintiff has tried to create a vague, illusory cause of action even when the plaint adequately describes and explains the civil rights of the plaintiff that are infringed. It is submitted that Id. Trial Court should have exercised power under order X CPC seeking examination of the plaintiff/appellant, in the alternative, the plaintiff/appellant had every right to clarify her cause of action by moving an application for amendment. Rejecting the plaint in limine was too harsh a step to be taken in the facts and circumstances of the matter.

g) Because the impugned order incorrectly states that the appellant/plaintiff has not stated where she is presently residing even when the memo of parties filed alongwith the plaint clearly states the present address of the appellant/plaintiff. It is contended that Id. Trial Court, based on the above incorrect finding, has jumped to the conclusion that appellant/plaintiff had approached the court with unclean hands.

h) Because the Id. Trial court has also erroneously recorded that appellant/plaintiff had hidden facts regarding litigation between parties, when the plaintiff had already disclosed about the police complaint and CAW complaint in the plaint.

i). Because the Id. Trial Court has erroneously held that the reliefs sought by the appellant/plaintiff are “ merely based on apprehension and are distinguishable from reasonable apprehension” and relief sought by the plaintiff are vague and are an abuse of process of court.

j). That Id. Trial Court even while referring to T Arivandandam Vs TV Satyapal 1977 4 SCC 467, has failed to appreciate and read the plaint in a meaningful manner and as a whole. The Id. trial court has been acted in a rush and without due consideration in rejecting the plaint.

k). That the Id. trial Court has divested the plaintiff/appellant of her inherent right to institute a civil suit and seek remedy in a court of law ( See Gangabai Vs Vijay Kumar 1974 2 SCC 393, Abdul Gafur Vs State of Utrakhand 2008 10 SCC 97).

l). that the Id. Trial Court has failed to follow the dictum of Dahiben Vs Arvindbhai Kalyanji Bhanushali 2020 7 SCC 366, where the Hon’ble Supreme Court has held that order 7 rule 11 leads to drastic effects and must, be invoked in strict compliance of the provision.

m). Because the Id. trial Court has wrongly held the reliefs sought in the plaint to be barred under section 41 (f),(h), (I) of the Specific Relief Act, 1963,

n). Because the impugned order misreads the facts mentioned in the plaint alongwith documents in support and erroneously

rejected the plaint of the appellant/plaintiff by holding that the plaint does not disclose cause of action that requires trial. The impugned judgment order exceeds the jurisdiction and parameters of order 7 rule 11 CPC and thus liable to be set aside.

20. It is further averred that if the impugned order dated 16.04.2024 passed by the Id. Trial Court is not set aside, the appellant shall suffer unnecessary injury, ceaseless agony and loss and she will not be able to enforce her right to enjoy her property as per own wishes.

21. The respondent has filed reply to the appeal by mentioning that the appellant has not approached the court with clean hands. It is further averred that the appellant has misled the court regarding the respondent obtaining the residence order which protected her rights to stay in matrimonial home. It is further averred that the order passed by the Ld. Trial court is speaking order. In the reply, the respondent has mentioned details of other matters and litigation going on between the parties which are not required to be mentioned herein for deciding appeal against order passed under order 7 rule 11 CPC.

22. Arguments heard from both sides and case file as well as trial court record perused. I have also perused the written arguments filed on behalf of appellant as well as respondent.

23. This appeal has been filed against order passed under order 7 rule 11 CPC and the said provision is reproduced as follows:

**Order 7 rule 11 CPC. 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-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction 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 grave injustice to the plaintiff.

24. It is settled law that for deciding an application under order 7 rule 11 CPC, the court has to examine only the averments made in the plaint as well as documents attached with the plaint. The plaint is required to be read as whole and the pleas taken by the defendant in the written statement as well as

in the application filed under order 7 rule 11 CPC are immaterial for deciding application under order 7 rule 11 CPC. The defence of the defendant cannot be considered at the stage of deciding application filed under order 7 rule 11 CPC. It is also settled law that a plaint cannot be rejected in part and if some of the reliefs are barred by law but the other reliefs are permissible in law then the plaint cannot be rejected under order 7 rule 11 CPC. It is one thing as to whether the plaintiff has disclosed the cause of action in the plaint for filing suit against the defendant and it is another thing as to whether the plaintiff is succeeded in proving the cause of action, after leading evidence. Reliance is placed on following judgments of Hon'ble Supreme Court of India and Hon'ble High Court of Delhi.

25. In *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174, the Hon'ble Supreme Court has observed and held as under:

*“ The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written*

*statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage”.*

26. In case titled Puja Aggarwal Vs Pravesh Narula, 2022 Live law (Del) 251, the Hon’ble High Court of Delhi has observed as under:

*16. When the court is dealing with an application under Order VII Rule 11 CPC, it is required to look at the averments in the plaint and plaint alone. The documents filed alongwith the plaint can also be considered. However, the stand of the defendant is irrelevant. It has been reiterated in Dahiben Vs. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366:- 23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, [2004] 9 SCC 512] which reads as : (SCC p. 562, para 139)*

*139. 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. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.*

*23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands,*

*without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R. V. Janakiraman [D. Ramachandran v. R. V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941]*

*18. That brings us to the facts of the present case. A scrutiny of the plaint would show that the respondent/plaintiff has averred that he has been using the logo and name R.D. SPECIAL in a particular packaging since long and in the last week of July, 2021, he had come across an application of the petitioner/defendant for registration of the trade mark R.D., whereupon, he immediately moved the court to prevent the use of his artistic work of a building which has been copied by the petitioner/defendant. The capital letters R.D. have also been used in a similar fashion. It is to protect his interest in his artistic work, that the suit has been filed. It would be the defence of the petitioner/defendant that she has been in prior use, that the copying of a theme would not amount to infringement and that the artistic work itself has not been published. These pleas would be an answer to the suit but not indicative of an absence of cause of action. There can be no confusion between the existence of a cause of action and the absence of merit in the suit. CM(M)-IPD 1/2022 Page 13 of 13 Whether the respondent/plaintiff would ultimately succeed or not, cannot dictate the existence of a cause of action.*

*19. In fact from the averments made in the application under Order VII Rule 11(a) CPC filed by the petitioner/defendant, (placed on the record as Annexure P-3), it is more than apparent that she has pleaded her defence to seek a dismissal of the suit, rather than a rejection of the same. When the pleas raised by the petitioner/defendant to repel the claims of the respondent/plaintiff cannot be considered at this stage, the learned Trial Court was right in observing that the questions raised by the petitioner/defendant being one of facts, would require trial. An appropriate issue regarding the existence and non-existence of the cause of action, amongst other issues can also be framed to be disposed of together, after evidence is recorded.”*

27. The Hon’ble Supreme Court of India in a case titled Dahiben Vs Arvindbhai Kalyanji Bhanusali, SLP ( civil) No.

11618 of 2017 has held as follows:

*“In Azhar Hussain v. Rajiv Gandhi1 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :*

*“12. ... The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.” 12.2 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

*2.3 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint<sup>2</sup>, read in conjunction with the documents relied upon, or whether the suit is barred by any law”*

28. It is also settled law that at the stage of deciding application filed u/o 7 rule 11 CPC, the averments made in the plaint are presumed to be true. Reliance is placed on the judgment of Hon’ble Supreme Court of India in a civil appeal No. 5622 of 2025 titled as P. Kumarakurubaran Vs P. Narayanan & Ors, decided on 29.04.2025. The Hon’ble Supreme Court of India has observed in the said judgment, in para No.12.1 as under:

*12.1.... At his preliminary state, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specially pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes as mixed*

*question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable”.*

29. Ld. Trial Court has rejected the plaint of the appellant/plaintiff under order 7 rule 11 CPC vide order dated 16.04.2024 and the relevant observations of the ld. Trial Court for rejecting the plaint are mentioned as under:

*“In the present matter during the course of arguments of defendant on the maintainability of the suit and upon a meaningful reading of the plaint of the plaintiff, it transpires that there is merit in the argument advance on behalf of the defendant that the plaintiff in the plaint has tried to create cause of action in a vague, illusory and whimsical manner. It is pertinent to mention that upon the entire reading of the plaint, it is evidently clear that the plaintiff has vaguely mentioned that in the month of January 2023 and February 2023, certain instances happened without properly explaining them and rather mentioning the same in a vague and evasive manner that the defendant allegedly threatened and coerce the plaintiff to transfer the property in her name, failing which plaintiff will suffer dire consequences. However, no single documents has been annexed with the plaint in support of these averments and allegations which questioned the conscience of this Court that the plaintiff has in fact tried to create an illusion of the cause of action by making bald averments only and no iota of document on record”.*

30. It is further mentioned as under in the order dated 16.04.2024:

*“further, on a bare perusal of the plaint, it is apparent that the relief sought by the plaintiff are merely based on the apprehension and the same is distinguishable from reasonable apprehension supported by cogent material, for instance, the plaintiff wishes to install the CCTV cameras at her property and is seeking restraintment of the plaintiff not to cause obstruction in the installation of CCTV cameras and not to damage the same. However, the same is based on not merely an apprehension rather a remote apprehension for which an injunction cannot be granted as the obedience and execution of the same will require constant supervision of the court and the same is*

*impracticable”.*

31. It is further mentioned as under in the order dated 16.04.2024:

*“Further, the plaintiff has sought the relief of injunction against defendant restraining her from not removing the household articles lying at the suit property and the jewelery and cash of the plaintiff which is lying almirah of the plaintiff. At this juncture, it is pertinent to mention that this relief is not merely vague but also an abuse of the process of the Court in so far as this relief is being sought without any rhyme and rhythm and specifically having regard to the fact that these articles, if any, are admittedly in the possession of the plaintiff herself. This transpires upon the conduct of the plaintiff that the process of law and the equitable relief of injunctions are being taken for a ride and being misused.*

*“It is further pertinent to mention that from a bare reading of plaint, it is evident that the plaintiff has not approached this Court with clean hands in so far as on the one hand, the plaintiff is submitting that she wishes to permanently settle in Delhi at the suit property without stating as to where she is presently residing. Further, plaintiff has not mentioned in the plaint with respect to the array of litigations being fought between the parties for the reasons best known to her.”*

32. Ld. Trial court has rejected the plaint under order 7 rule 11 CPC on the ground that the plaint of the plaintiff is devoid of cause of action and Plaintiff is not entitled for equitable relief of injunction in view of the bar U/s 41 of the Specific Relief Act and more specifically as mentioned under clauses (f), (h), & (I).

33. In the present suit, the plaintiff had sought the following reliefs:

*i. Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant thereby directing the defendant to handover and deliver the physical and vacant possession of the suit property i.e. C-120A, Second Floor, Ganesh Nagar, Tilak Nagar, New Delhi to the plaintiff.*

*ii. Pass a decree of mandatory injunction in favour of the plaintiff and against the defendant thereby directing the defendant to remove herself*

*with entire belongings from the suit property i.e. C-120A, Second floor, Ganesh Nagar, Tilak Nagar, New Delhi to the plaintiff.*

*iii. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant, her agents, servants, attorneys etc. from creating any interference and obstruction on the way of the plaintiff in egress and ingress in the suit property i.e. C-120A, Second Floor, Ganesh Nagar, Tilak Nagar, New Delhi to the plaintiff.*

*Iv. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendants her agents, servants attorneys, successors etc. from creating any interference and obstruction on the way of the plaintiff to enjoy and use of the suit property i.e. C-120A, Second Floor, Ganesh Nagar, Tilak Nagar, New Delhi.*

*v. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant, her agents, servants, attorneys etc. from creating hindrance and obstruction on the way of the plaintiff to install the CCTV Camera upon the suit property and to use, manage and control of the same.*

*vi. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant, her agents, servants, attorneys etc. from causing any damage and destruction to the CCTV Camera installed at the suit property i.e. C-120A, Second Floor, Ganesh Nagar, Tilak Nagar, New Delhi*

*vii. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendants, her agents, servants, attorneys etc. from creating any third party interest and part with possession of the suit property in any manner whatsoever.*

*viii. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant, her agents servants, attorneys etc. from removing the house hold articles at the suit property and the jewellery and cash lying in almirah of the plaintiff existing at the suit property.*

*ix. Pass a decree for damages to the tune of Rs. 8,000/- per month excluding the electricity and water charges on account of illegally and unlawful using and enjoying the suit property from the date of institution of the suit till actual physical and vacant possession of the suit property to the plaintiff in a peaceful manner along with pendente-lite and future interest @ 12% per annum on the damages.*

*x. the cost of the suit may also kindly be awarded in favour of the plaintiff and against the defendant.*

34. In the suit, the plaintiff had sought relief of mandatory injunction against the defendant to hand over and deliver the physical, vacant possession of suit property and further direction to the defendant to remove herself with entire belongings from suit property.

35. The plaintiff has alleged in the plaint that she is owner of suit property. The plaintiff has also relied upon copy of sale deed of the suit property in her favour with the plaint.

36. I have perused the copy of sale deed dated 05.02.2013. As per the sale deed, suit property has been purchased by plaintiff from Sh. Deepak Kumar. So, on the basis of above said sale deed, it is prima facie established that plaintiff is the owner of suit property.

37. It is averred by the plaintiff in the plaint that marriage between the son of the plaintiff and defendant was solemnized on 19.04.2019 according to Hindu rites and ceremonies in a very simple manner at Arya Samaj Vedic Mandi, C Block Amar Colony, New Delhi-110024.

38. It is further averred by the plaintiff in the plaint that after the marriage, the plaintiff had allowed/permitted her son and defendant to reside in the suit property. It is further averred that defendant and her husband, just after the marriage, started residing in the suit property. It is further averred that from the

wedlock of the above said marriage one male child namely Master Mivaan Bhain was born on 21.05.2021.

39. It is further averred by the plaintiff in the plaint that in the month of February, 2023, the plaintiff visited at Delhi and had requested the defendant and her husband to vacate the suit property, on this the defendant and her husband had given assurance and promise to vacate the suit property upto 15.08.2023. It is further averred that defendant is giving the continuous threat to the plaintiff and her son that if the property in question is not transferred in her name then she will transplant a false case of dowry and other legal proceedings by misusing and abusing the law relating to women. The defendant does not have any legal right, title and interest in respect of the suit property.

40. It is further averred by the plaintiff in the plaint that plaintiff is continuously requesting the defendant to vacate the suit property but the defendant is averting the matter on one pretext or other. It is further averred that the defendant is illegally and unlawfully retaining the suit property against the will and consent of the plaintiff and contrary to the wishes and desire of the plaintiff.

41. During arguments, Id. counsel for respondent has argued that the license of defendant was never terminated and defendant was never asked to vacated the suit property. He further argued that there is no evidence on record regarding termination of

license of respondent. The above said defence of respondent is matter of trial. During trial, burden will remain upon the appellant to prove that he had terminated the license of respondent. Moreover, filing of suit & receiving of summons of suit is also notice to the respondent regarding termination of her license to remain in possession of suit property.

42. As per judgment of Hon'ble Supreme Court given in a case titled P. Kumarakurubaran Vs P. Narayanan & Ors, decided on 29.04.2025 ( Supra), at the stage of deciding application under order 7 rule 11 CPC, the facts of plaint are presumed to be true. So the above said averments of plaintiff has to be presumed correct at this stage. It is also settled law that the disputed facts have to be decided after giving opportunity to the parties to lead evidence.

43. The plaintiff being owner of the suit property has legal right to file suit against the defendant for obtaining the possession of suit property. So, prima facie, the plaintiff has cause of action to file suit for seeking relief of directing the defendant to hand over and deliver the physical and vacant possession of suit property to defendant and for seeking directions to the defendant to remove herself with her entire belongings from the suit property.

44. Ld. Trial court has observed in the impugned order that “ At this stage, it is pertinent to mention that upon enquiry from

both the sides, it has transpired that several litigations are pending between the parties including proceedings under DV Act, whereby the defendant is seeking her residence right.

45. It is settled law that if defendant is seeking residence right in suit property, even then suit for eviction of defendant from suit property is maintainable. At this stage of deciding application under order 7 rule 11 CPC, the plaint cannot be rejected on the ground of residence right of defendant in suit property as it is matter of trial as to whether defendant is succeeded in proving her residence right in the suit property. Moreover, plaintiff can also be direct to make alternate accommodation arrangement for defendant. The defendant has also to prove domestic violence committed by plaintiff for getting residence order as per Domestic Violence Act. Reliance is placed upon following judgment of Hon'ble High Court of Delhi in Madalsa Sood vs Maunicka Makkar & Anr. CS( OS) 93/2021, decided on 10 December, 2021, and the relevant paras of said judgment are mentioned as under:

*13. The learned senior counsel for the defendants, relying on the judgment of the Supreme Court in Satish Chander Ahuja (supra) has argued that as the suit property was the shared household of the defendant No.1, this suit itself could not be instituted. However, the learned counsel for the plaintiff has pointed out that quite to the contrary, the Supreme Court has found a civil suit for possession to be in consonance with the provisions of Section 17 of the DV Act. This Court is also of the view that in the light of the decision of the Supreme Court in Satish Chander Ahuja (supra), the mere fact that premises take on the nature of shared household would not per se be a complete defence to a suit for possession filed by the owner of the property, being the in-laws of the defendant/aggrieved person, nor is such a suit barred. The protection under the DV Act assuring the residence of the aggrieved person in the shared*

*household does not vest any proprietary or indefeasible right on the aggrieved person. It is also subject to eviction being initiated in accordance with law. Section 17 of the DV Act reads as under:*

*"17. Right to reside in a shared household.--(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.*

*(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."*

*(emphasis added)*

*14. It would be apposite to reproduce the view taken by the Supreme Court in Satish Chander Ahuja (supra) on what would satisfy the need to adopt procedure established by law, to seek the eviction of an "aggrieved person".*

*"124. Drawing the analogy from the above case, we are of the opinion that the expression "save in accordance with the procedure established by law", in Section 17(2) of the 2005 Act contemplates the proceedings in the court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the property is maintainable before a competent court. We may further notice that in sub-section (2) the injunction is "shall not be evicted or excluded from the shared household ... save in accordance with procedure established by law". Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted suit by the owner as to whether the women need to be excluded or evicted from the shared household. One most common example for eviction and exclusion may be when the aggrieved person is provided same level of alternate accommodation or payment of rent as contemplated by Section 19 sub-section (f) itself. There may be cases where the plaintiff can successfully prove before the competent court that the claim of the plaintiff for eviction of the respondent is accepted. We need not ponder for cases and circumstances where the eviction or exclusion can be allowed or refused. It depends on facts of each case for which no further discussion is necessary in the facts of the present case. The High Court in the impugned judgment has also expressed opinion that suit filed by the plaintiff cannot be held to be non-maintainable with which conclusion we are in agreement."*

*(emphasis added)*

15. Nor does the right of residence allowed to aggrieved person extend to her insisting on the right of residence in a particular premises. Section 19 of the DV Act provides for an alternate accommodation being given to the aggrieved person of the same level in certain circumstances. In fact even in *Satish Chander Ahuja (supra)* relied upon by the learned counsel for the defendants, the judgment of a Division Bench of this Court in *Eveneet Singh Vs. Prashant Chaudhari 2011 SCC OnLine Del 4651* in para 14 was quoted with approval as under:

"14. It is apparent that clause (f) of sub-section (1) of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."

16. The Supreme Court in para 90 of its judgment in *Satish Chander Ahuja (supra)* further observed as under:

"90. Before we close out discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of the 2005 Act or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by the High Court in para 56 adequately balance the rights of both the parties."

*(emphasis added)* These directions issued by the learned Single Judge of this court in para 56 of its judgment in *Ambika Jain Vs. Ram Prakash Sharma 2019 SCC OnLine Del 11886* are reproduced for ready reference as below:

"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:

(i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's

*ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the trial Court shall, before passing a decree of possession on the sole premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.*

*(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.*

*(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in Vinay Verma (supra).*

*(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.*

*(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today."*

*17. Thus, it is clear that even where a residence is clearly a shared household, it does not bar the owner, the plaintiff herein, from claiming eviction against her daughter-in-law, if the circumstances call for it.*

46. The Hon'ble High Court of Delhi in a case titled Neelam Arora & Anr Vs Manju Arora CC(OS) 606/2023, Decided on 9<sup>th</sup> September, 2025 has observed as under:

*15. In the facts of this case, there can be no dispute that suit*

*property is a shared household of Defendant within the meaning of Section 2(s) of the PWDV Act. However, the impossibility of the Plaintiffs and Defendant continuing to reside with each other under the same roof is evident ex-facie and this Court is of the opinion that it is detrimental to the mental and physical health of the parties. The separation of the residence of the parties is inevitable in such facts and since Plaintiff No. 2 is the owner of the house, the direction to the Defendant for vacating the house is the only option available to the Court.*

*16. The Defendant has alleged domestic violence by the Plaintiffs at the behest of their son, which are subject matter of trial in M.C. No. 565/2022 and the said allegation will be tested during trial of the said case. However, in the interregnum, having perused the allegations levelled by the parties against each other, this Court finds no reason to compel the Plaintiffs and Defendant to reside together. Defendant's right to residence under Section 17 and Section 19(1)(f) of PWDV Act can be secured in these proceedings itself while passing the final decree of eviction against the Defendant.*

*18. Learned Single Judge of this Court in Ambika Jain v. Ram Prakash Sharma and Another 13 has categorically held that a suit for mandatory injunction/eviction by the owner of the shared household is maintainable 2019 SCC OnLine Del 11886 against the aggrieved women and further held that final order for eviction can be passed in such a suit by the Civil Court after making provision for suitable alternate accommodation for the aggrieved women. The relevant paragraph 56 of this Judgment reads as under:*

*"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:*

*(i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.*

*(ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the trial Court shall, before passing a decree of possession on the sole premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate*

*accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.*

*(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.*

*(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in Vinay Verma (supra).*

*(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.*

*(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today."*

*[Emphasis Supplied]*

*19. This Judgment i.e., Ambika Jain v. Ram Prakash Sharma (supra) was challenged before the Supreme Court, which led to the passing of the landmark Judgment Satish Chandra Ahuja v. Sneha Ahuja (supra), wherein the Supreme Court expressly upheld the directions at serial no. (ii) to (vi) issued by the learned Single Judge at paragraph 56 of its judgment. The relevant paragraph 90 of the judgment of the Supreme Court reads as under:*

*"90. Before we close our discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under Section 12 of Act, 2005 or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by*

*High court in paragraph 56 adequately balances the rights of both the parties."*

*20. In Satish Chandra Ahuja v. Sneha Ahuja (supra) at paragraph 124, the Supreme Court recognized that a Civil Court while passing orders against the aggrieved women/defendant for exclusion and eviction from the shared household can pass orders contemplated under Section 19(1)(f) of the PWDV Act. In this judgment, the Supreme Court expressly upheld the finding of the High Court that a suit for mandatory and permanent injunction by the owner of the shared household is maintainable against the aggrieved woman. The relevant paragraphs 113, 114, 117 and 124 are set out herein under:*

*"113. Section 17 of the Act has two sub-sections which engraft two independent rights. According to subsection (1) notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. This right has been expressly granted to every woman in domestic relationship to fulfill the purpose and objective of the Act. Although under the statute regulating personal law the woman has right to maintenance, every wife has right of maintenance which may include right of residence, the right recognized by sub-section (1) of Section 17 is new and higher right conferred on every woman.*

*114. The right is to be implemented by an order under Section 19, on an application filed under sub-section (1) of Section 12. Sub-section (2) of Section 17, however, contains an exception in the right granted by sub-section (2), i.e., "save in accordance with the procedure established by law". Sub-section (2) of Section 17, thus, contemplates that aggrieved person can be evicted or excluded from the shared household in accordance with the procedure established by law. What is the meaning and extent of expression "save in accordance with the procedure established by law" is a question which has come up for consideration in this appeal. Whether the suit filed by the plaintiff for mandatory and permanent injunction against the defendant in the Civil Court is covered by the expression "save in accordance with the procedure established by law". We may further notice that the learned Magistrate while passing the interim order on 26.11.2016 in favour of the defendant on her application filed under Section 12 has directed that "the respondent shall not alienate the alleged shared household nor would they dispossess the complainant or their children from the same without orders of a Competent Court". The Magistrate, thus, has provided that without the*

*orders of Competent Court the applicant (respondent herein) should not be dispossessed. In the present case, interim order specifically contemplates that it is only by the order of the Competent Court respondent shall be dispossessed.*

...

*117. The right to reside in shared household as granted by Section 17 itself contemplates an exception in express words, i.e., "save in accordance with the procedure established by law".*

...

*124. Drawing the analogy from the above case, we are of the opinion that the expression "save in accordance with the procedure established by law", in Section 17(2) of the Act, 2005 contemplates the proceedings in court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the property is maintainable before a Competent Court. We may further notice that in sub-section (2) the injunction is "shall not be evicted or excluded from the shared household save in accordance with procedure established by law". Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted suit by the owner as to whether the women need to be excluded or evicted from the shared household. One most common example for eviction and exclusion may be when the aggrieved person is provided same level of alternate accommodation or payment of rent as contemplated by Section 19 sub-section (f) itself. There may be cases where plaintiff can successfully prove before the Competent Court that the claim of plaintiff for eviction of respondent is accepted. We need not ponder for cases and circumstances where eviction or exclusion can be allowed or refused. It depends on facts of each case for which no further discussion is necessary in the facts of the present case. The High Court in the impugned judgment has also expressed opinion that suit filed by the plaintiff cannot be held to be non-maintainable with which conclusion we are in agreement.*

*[Emphasis Supplied]*

*21. Another Single Judge of this Court in Madalsa Sood v. Maunicka Makkar (supra) after considering the aforesaid judgments categorically held that a suit for eviction is maintainable and in the facts of the said case proceeded to grant a decree for possession in favour of the plaintiffs' therein. The relevant paragraph 19 reads as under:*

"19. Thus, it is clear that even where a residence is clearly a shared household, it does not bar the owner, the plaintiff herein, from claiming eviction against her daughter-in-law, if the circumstances call for it."

*[Emphasis Supplied]*

22. In the facts of this case, since the ownership of Plaintiff No. 2 of the suit property is admitted, the directions issued by the Court in *Ambika Jain v. Ram Prakash Sharma (supra)* at paragraph 56 (ii) are squarely attracted. For the purpose of granting the final relief of eviction in favour of the Plaintiffs coupled with grant of residence order in favour of the Defendant, this Court need not await the final determination of the allegations of the domestic violence made by the Defendant; and this is the intent of the law settled by *Ambika Jain v. Ram Prakash Sharma (supra)* as upheld by Supreme Court in *Satish Chandra Ahuja v. Sneha Ahuja (supra)*.

Residence orders under Section 19(1) of the PWDV Act are granted after the competent Court is satisfied that domestic violence has taken place against the aggrieved person. The direction to provide alternate accommodation to the aggrieved person under Section 19(1)(f) follows such a determination. In *Satish Chandra Ahuja v. Sneha Ahuja (supra)*, the Supreme Court was confronted with the orders of the Trial Court where orders of eviction had been passed against the aggrieved person without returning a finding on the allegations of domestic violence and without providing for her alternate residence. In such facts, the Supreme Court held that the Trial Court could not have non-suited the aggrieved person without protecting her residence rights since her allegations of domestic violence had not been adjudicated upon.

*It is only if the Civil Court while exercising powers under Order XII Rule 6 CPC is not persuaded to grant residence order as contemplated under Section 19(1)(f) of the PWDV Act in favour of the aggrieved person that it would have to undertake trial on the allegations of the domestic violence levelled by the aggrieved person (defendant) against the Plaintiffs.*

47. In view of foregoing facts and discussion, suit of plaintiff for relief of claiming damages @ Rs. 8,000/- per month excluding the water and electricity charges is also maintainable against the defendant as license of defendant has been terminated by the plaintiff in February, 2023 and defendant and her husband are to vacate the suit property up to 15.08.2023.

48. Plaintiff being owner of the suit property, has every right to seek restrain order against defendant from creating third party interest & parting with possession of suit property, so the above said relief of plaintiff is maintainable.

49. As per the averments of plaint, the defendant can sell the valuable house hold articles and also commit the theft of cash & jewellery of plaintiff which is lying in the Almirah of plaintiff. It has come on record in the order of ld. Trial court that various litigations are pending between plaintiff and defendant. So, at this stage, without giving opportunity to lead evidence to the plaintiff, the above said apprehension of plaintiff cannot be presumed to be vague apprehension. So, the relief in respect of valuable articles, cash & jewellery is maintainable. It is matter of trail as to whether the plaintiff is succeeded in proving his above said apprehension or not.

50. From the facts of plaint, the other reliefs sought by plaintiff are also maintainable. Moreover, it is settled law that the plaint cannot be rejected in part & if some of relief of plaintiff are not maintainable, even then the plaint cannot be rejected.

51. During arguments, ld. counsel for respondent has argued that the plaintiff had not filed plaint in duplicate, so plaint of appellant was also liable to be rejected under order 7 rule 11 (e) CPC. The above said ground of rejection of plaint was never

taken by the respondent before Id. Trial court.

52. The prayer for rejection the plaint, on the ground of non-filing of plaint in duplicate is procedural and does not entitle automatic rejection of plaint at the first instance without giving an opportunity to the plaintiff for remove the said defects. Reliance is placed upon the following Judgment of Hon'ble Supreme Court of India in a case titled Salem Advocate Bar Association, T.N. Vs Union of India , 2002, Supreme 855:

*16. Our attention has been drawn to Order 7 Rule 11 to which clauses (e) and (f) have been added which enable the court to reject the plaint where it is not filed in duplicate or where the plaintiff fails to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11 (e) or non-compliance as referred to in Rule 11(f), the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done the court will have the liberty or the right to reject the plaint.*

53. The contention of Id. counsel for respondent that in the affidavit of appellant filed in support of plaint, it is not mentioned that the plaintiff is in Delhi, so the said affidavit is no affidavit in the eyes of law, is also not valid contention.

54. The affidavit filed with plaint is attested by Id. Oath Commissioner and it is clearly mentioned in seal of Id. Oath Commissioner that Smt. Veena Bhasin has solemnly affirmed before him at Delhi and contents of affidavit have been read and explained & correct to her knowledge. So, it is prima facie

established that the appellant was in Delhi at the time of getting attestation the affidavit in support of plaint.

55. Ld. counsel for respondent has argued that as per averments of the plaint, the license was given to husband and wife together but husband has not been made party in the present case. So, suit was also bad for non-joinder of necessary parties. The above said plea was never raised before Ld. Trial Court at the time of deciding application under order 7 rule 11 CPC. It is settled law that plaint can not be rejected under order 7 rule 11 CPC on the ground of non-joinder of necessary parties. Reliance is placed upon judgment of Hon'ble High Court of Delhi given in a case titled Bhupender Singh Vs Ajit Pal Singh Bindra & Anr., C.P.P. 23/2024, decided on 09.09.2025 & relevant para is as under :

*4. So far as concerns the ground of challenge of non-joinder of parties, it is settled law that this ground cannot be taken as a ground for challenge under Order VII Rule 11 of the CPC and can only be agitated as a defence. Reliance in this behalf is placed on the judgment of the Supreme Court in Kasturi v. Iyyamperumal & Ors.; (2005) 67 SCC 733. 4.1 This objection has also been dealt with by this Court in M/s Radiance Health Care v. Sanjeev Kumar Jain; 2024:DHC:7214. This Court, while deciding a matter on whether the grounds of non-joinder of parties is maintainable in an Application under Order VII Rule 11 of the CPC, has held that it is settled law that this is not a ground for dismissal of a plaint under order VII Rule 11 of the CPC. The relevant extract of Sanjeev Kumar Jain case is set out below:*

*5. The other ground taken by the Petitioner/Defendant is the ground of C.R.P. 23/2024 Page 2 of 4 misjoinder of parties. However, it is settled law that this ground is not a ground for dismissal of the plaint under Order VII Rule 11 of the CPC. 5.1 The Supreme Court in Prem Lala Nahata & Anr. vs. Chandi Prasad Sikaria has while clarifying that the defect of misjoinder of parties and cause of action is a defect that can*

*be waived and cannot be a ground for rejection of plaint under Order VII Rule 11 of CPC has held that such misjoinder does not render the suit barred by law. The scheme of the Code itself, through Order I Rules 3-A, 4, 5, 9 and 10 and Order II Rules 3 and 6, indicates that neither misjoinder of parties nor misjoinder of causes of action defeats a suit. At best, it is a curable procedural defect which the Court may regulate by directing amendment, election, or separate trials. Consequently, a plaint suffering from misjoinder cannot be rejected at the threshold under Order VII Rule 11(d), since it cannot be said that such a suit is 'barred by any law'. The relevant extract from the Prem Lala Nahata case is set out as below: "12. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order 1 Rule 1 and Order 1 Rule 3 on the one hand, or Order 2 Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to rejection. This is clear from Rules 3-A, 4 and 5 of Order 1 of the Code, and this is emphasised by Rule 9 of Order 1 of the Code which provides that no suit shall be defeated by reason of non-joinder or misjoinder of parties and the court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order 1 which enables the court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order 2 deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such causes of action in the same suit. Rule 6 enables the court to order separate trials even in a case of misjoinder of causes of action in a plaint filed.*

XXXX XXXX XXXX

*16. Order 7 Rule 11(d) speaks of the suit being "barred by any law"*

*According to Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit,*

*though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action.*

*On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order 1 or Order 2 but on the other hand, Rule 9 of Order 1, Rules 1 and 3 of Order 1, and Rules 3 and 6 of Order 2 clearly suggest that it is open to the court to proceed with the suit notwithstanding the defect of*

*misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order 7 Rule 11(d) of the Code.*

*17. Thus, when one considers Order 7 Rule 11 of the Code with particular reference to clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits."*

56. In view of the foregoing discussion, it is held that the plaintiff had clear genuine cause of action for filing the suit.

57. Ld. Trial Court has failed to properly appreciate the settled law for deciding application under order 7 rule 11 CPC. Ld. Trial court has also failed to appreciate the settled law that at the stage of deciding application under order 7 rule 11 CPC, the averments made in the plaint as well as documents attached with the plaint are the only germane for deciding the application under order 7 rule 11 CPC and the defence of the defendant cannot be considered and at that stage, the averments of plaint are presumed to be true.

58. Before parting with the order. This court deems it appropriate to observe that ld. Trial Court has wrongly observed that the plaintiff has not approached the court with clean hands in so far as, on the one hand, the plaintiff is submitting that she wishes to permanently settle in Delhi at the suit property without stating as to where she is presently residing as this observation is contrary to the trial court record. In memo of parties as well as in affidavit in support of plaint, the current residential address of plaintiff is clearly mentioned which is MIG-462, Sector10, Avas Vikas Colony, Agra, U.P. It there was any confusion in the mind of ld. Trial Court regarding current residential of plaintiff, the ld. Trial Court should have inquired the same from plaintiff as well as from ld. counsel for plaintiff before giving this observation against plaintiff.

59. In view of the foregoing discussion and observations, this court is of the considered opinion that the impugned order dated

16.04.2024, passed by Id. Trial Court suffer from material irregularity and cannot sustain in law.

60. Accordingly, the appeal of the appellant stands allowed and the impugned order dated 16.04.2024, passed by Ms Disha Singh, Id. Civil Judge-02, West, stands set aside and the suit of the plaintiff is directed to be restored at the board of Id. Trial Court for hearing and deciding it in accordance with law. No order as to cost.

61. The appellant/plaintiff is allowed to file duplicate plaint in the trial court within 21 days from today.

62. The observation made herein shall not be considered as an opinion on the merits of the case. Pending application seeking ex-parte ad-interim order also stands disposed off accordingly.

63. Parties are directed to appear before the Ld. Trial Court on 07.05.2026 at 11:00 A.M. TCR alongwith copy of this judgment be sent to Id. Trial Court for intimation.

64. Case file of present appeal be consigned to record room after due compliance.

**Announced in the open court  
today 2<sup>nd</sup> May, 2026**

**(SHIV KUMAR)  
DJ-02, West/Delhi**