

HIGH COURT OF MADHYA PRADESH**Civil Revision No.358/2019**

(Deepak Sahu @ Bablu Vs. Vijay Sahu)

Jabalpur, Dated :31.07.2019

Shri J.L. Soni, learned counsel for the petitioner.

Heard on admission.

The present revision is filed, aggrieved by the order dated 07.05.2019, passed by Civil Judge Class I, Berasia, district Bhopal in C.S. No.1-B/2016, whereby the application filed by the defendant/petitioner under Order 7 Rule 11 of the C.P.C. has been dismissed.

Brief facts necessary for disposal of this revision are that the plaintiff/respondent filed a suit seeking a decree for recovery of Rs. 12 lacs against the present petitioner on the ground that defendant/petitioner executed an agreement to sale on 15.07.2014 of his property, Khasra No. 103/1/1, area 2,500 sq. ft. situated at Tikankhedi, Berasia, for a consideration of Rs.30 lacs. An advance amount of Rs.12 lacs was paid at the time of execution of the agreement. It was alleged that defendant/petitioner failed to execute the sale deed dated 15.07.2014, therefore, a suit for refund of Rs.12 lacs given as advance alongwith interest and the cost of the suit was filed.

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The defendant/petitioner opposed the claim of the plaintiff by filing the written statement. An application under Order 7 Rule 11 of the C.P.C. was thereafter filed by the present petitioner on the ground that the plaintiff has not valued the suit properly and has not paid the court fees accordingly, as the suit is based on an agreement of sale having a value of Rs.30 lacs. It was also stated that the suit is filed on the basis of a forged and fabricated document, and that the plaintiff is required to file a suit under Section 10 of the Specific Relief Act, as there is no condition in the said agreement regarding refund of advance amount.

The said application was replied by the plaintiff/respondent.

The learned trial Court after hearing both the parties, dismissed the application vide the impugned order.

It is reflected from the documents on record that the suit filed by the plaintiff is not for specific performance of contract, but for recovery of the amount of Rs.12 lacs, that

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has been paid by him in advance while executing the agreement, which was valued at Rs.30 lacs. However, since the suit is only for recovery of advance amount that was paid by the plaintiff/respondent and not for specific performance of the contract, he has rightly valued the suit for Rs.12 lacs and has paid the court fees accordingly. The next contention of learned counsel for the defendant/petitioner that the agreement is a forged and fabricated document is meritless, as the same can only be decided after taking evidence in this regard and cannot be decided at the stage of deciding the application under Order 7 Rule 11 of the C.P.C.

Order 7 Rule 11 of C.P.C. reads as under :-

Rule 11. Rejection of plaint.- *The plaint shall be rejected in the following cases :-*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on

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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 provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

It is thus well settled that, plaint can only be rejected if it squarely falls within the ambit and four corners of Order 7 Rule 11 of the C.P.C. and not otherwise. The Supreme Court in the case of **Kamla and others Vs. K.T. Eshwarasa and others (2008) 12 SCC 661**, after examining the relevant provisions of Order 7 Rule 11 of C.P.C. held as under :-

“Order 7 Rule 11(d) CPC has limited application. For its applicability it must be shown that the suit is barred under

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any law. Such a conclusion must be drawn from the averments made in the plaint. What would be relevant for invoking Order 7 Rule 11(d) CPC are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. For the purpose of invoking the said provision, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

In the backdrop of aforesaid legal position, it cannot be said that the grounds taken by the defendant/petitioner that the suit is not valued properly as well as the same is a forged and fabricated document, fall within the four corners of Order 7 Rule 11 of C.P.C.

In view of the aforesaid, I am of the considered opinion that the learned trial Court has not committed any jurisdictional error or material irregularity in passing the impugned order.

Resultantly, this revision petition being devoid of merits is accordingly dismissed.

(Nandita Dubey)
Judge

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