

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 78/2010

% ***Judgment Delivered on: 30.05.2011***

Surender Kaur & others Appellant
Through: Mr. Rajesh Tyagi for the appellant .

versus

S. Pritipal Singh Respondent
Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J.

1. The present appeal is directed against the order dated 28.01.2010 passed by learned Additional District Judge whereby the suit filed by the appellants seeking declaration and permanent injunction was dismissed by the trial court on an application filed by the respondent under order VII Rule 11 CPC as being barred by law. The trial court in its order dated 28.01.2010 observed:

“When as per paragraph no. 31 of the order of the Supreme Court dated 18.12.2009, beside the question of limitation other special grounds and reasons taken in the leave to defend application were considered and eviction order was confirmed then there exists no cause of action in favour of the plaintiffs to file the present suit which is barred under Order VII Rule 11 CPC. This suit is not maintainable being hit by the provisions of section 43 of DRC Act and is liable to be dismissed. The second ground taken in the application regarding improper valuation of the suit need not be

considered in such situation where the main suit is being dismissed. Application of the defendant under Order VII Rule 11 CPC is allowed. Suit is dismissed. Parties to bear their own cost. File be consigned to record room.”

2. The facts necessary to be noticed for disposal of the present appeal are that the respondent is the elder brother of late husband of the appellant no.1 (Smt.Surender Kaur), appellants no.2 to 6 are children of the deceased brother. The respondent claims himself to be the absolute owner of I-C/46, Namdhari Colony, Ramesh Nagar, New Delhi (‘hereinafter referred to as “*suit property*”). The respondent filed an eviction petition against the appellants under the provisions of Section 14 (1) (e) of the Delhi Rent Control Act, before the Additional Rent Controller Delhi on the ground of bonfide requirement of the suit premises by the respondent. Late Sh. Satpal Singh, predecessor-in-interest of the appellants herein, filed an application for leave to defend after a delay of eight days beyond the statutory period of 15 days prescribed under section 25B of Delhi Rent Control Act. The said application seeking leave to defend was rejected by the trial court vide order dated 13.10.2000 on the ground that a Rent Controller does not have the power to condone delay in filing application for leave to defend and subsequently an eviction decree was passed vide order dated 28.02.2001. The predecessor-in-interest of the appellants filed an application under Order IX Rule 13 read with Order XXXVII Rule 4 of the Code of Civil Procedure for setting aside the eviction decree dated 28.02.2001 and for condonation of delay in filing the

application for leave to defend. The said application was allowed by the trial court by an order dated 07.12.2001 on the ground that sufficient cause existed for recalling the eviction order and the appellants herein were granted liberty to file their application for leave to defend. Assailing the order of the trial court, the respondent preferred a CM (M) being CM(M) No.65/2002 before this Court which was dismissed vide order dated 30.10.2006 which was further assailed by the respondent in a special leave petition being SLP (C) No. 1992/2006. The Apex Court vide its order dated 18.12.2009, while allowing the appeal of the respondent, set aside the order of the trial court and granted six months time to the appellants herein to vacate the premises upon filing of an undertaking within one month. The operative portion of the finding of the Apex Court is as under:

“29. For the reasons aforesaid , we are therefore of the view that the High Court has acted illegally and with material irregularity in the exercise of its jurisdiction in affirming the order of the Additional Rent Controller whereby the Additional Rent Controller had allowed the application for setting aside the order of eviction and restored the application for leave to contest the eviction proceeding when such power, in our view, was not conferred on the Rent Controller to entertain such an application filed by the tenant/respondent.”

3. Admittedly no undertaking was ever filed by the appellants. Instead the appellants herein filed a suit for declaration that the eviction decree dated 28.02.2001 is null and void alleging that the said decree has been obtained by the respondent by playing fraud upon the court since the respondent has concealed from the court

the fact that the predecessor of the appellants was not a tenant but was the respondent's younger brother. In the the said suit, the appellants also prayed for permanent injunction against the respondent restraining him from dispossessing the appellants from the suit property by way of execution. In the said suit, the respondent filed an application under Order VII Rule 11 CPC praying for rejection of the plaint under clause (d) of Rule 11 since the eviction decree passed by the trial court has attained finality by virtue of the order dated 18.12.2009 passed by the Apex Court in SLP(C) No. 1992/2006 wherein the Apex Court has confirmed the said eviction decree. The said application was allowed by the trial court vide order dated 28.01.2010 thereby rejecting the plaint of the appellants being barred under section 43 of the Delhi Rent Control Act which has led to the filing of the present appeal. The learned trial court held as under:

“When there existed no relationship of landlord and tenant between defendant and Sh. Satpal Singh in view of judicial admission made by the defendant as well as findings of the civil court then on the face of it the eviction proceedings could not be said as maintainable. On the face of record it can be said that defendant had filed eviction proceedings not only by concealing the material facts but also by playing fraud upon the court but if the paragraph no. 31 of the order of the Supreme Court dated 18.12.2009 is taken into consideration then it can be said that Supreme Court had considered other special reasons also taken in leave to defend application before confirming the eviction order of the court of ARC dated 28.02.2001. From the judgment of the Supreme Court it can be said that the question of fraud allegedly committed by the defendant had been considered and over ruled. In such circumstances, this court has no jurisdiction and authority to ignore the findings of the Supreme Court. In view of the judgment of the Supreme Court

dated 18.12.2009, the plea of commission of alleged fraud in fact is not available now to the plaintiffs. Such type of plea if is taken into consideration would violate the provisions of section 43 of the Delhi Rent Control Act as the decision of rent court or any appellate court cannot be challenged in any civil proceedings or otherwise.

When as per paragraph no. 31 of the order of the Supreme Court dated 18.12.2009, beside the question of limitation other special grounds and reasons taken in the leave to defend application were considered and eviction order was confirmed then there exists no cause of action in favour of the plaintiffs to file the present suit which is barred under order 7 Rule 11 CPC."

4. It is the case of the appellants that they are the legal heirs of Late Sh. Satpal Singh who was the co-owner/allottee of the suit property who died intestate on 12.05.2005 and thus, they are also the joint owners who are in possession of 40 sq. yards out of the 100 sq. yards of the suit property in their own independent right. The counsel for appellant submits that the suit property was allotted to the HUF consisting of Sukhanandan Singh, Prithi Pal Singh, Satpal Singh, Harbhajan Singh, Kanwarjeet Singh and Smt. Sumiter Kaur, widow of late Sh. Harnam Singh. Since Sukhanandan Singh was in the army, the lease deed was executed in the name of the respondent with the consent of all the family members and the property was further constructed by joint funds of Satpal Singh, Harbhajan Singh and Kanwarjeet Singh. The counsel further submits that a family settlement was also entered into on 15.10.1963 wherein all five brothers including the respondent and the father of appellants were declared as co-owners of the suit property. The appellants, being legal heirs of Satpal Singh, are in

the possession of a portion of the suit property in their independent right and are not tenants of the respondent.

5. It is contended by counsel for appellants that order dated 28.01.2010 is bad in law and is liable to be set aside. The counsel next contends that the learned trial court has grossly erred in rejecting the plaint of the appellants on the ground that no cause of action exists since the Apex Court has taken into consideration the special circumstances pleaded in the leave to defend application and the plaint is barred under section 43 of the Delhi Rent Control Act. The grievance of the appellants is that despite taking notice that respondent had concealed material fact that the appellant was the brother of the respondent from the court, the trial court has rejected the plaint of the appellants on the ground that the Hon'ble Apex Court had taken "*other special reasons*" into consideration while deciding the application for setting aside the decree of eviction. It is strongly contended by the counsel that the trial court has misconstrued para 31 of the Judgment dated 18.12.2009 passed by Hon'ble Supreme Court and further erroneously held that the ground of fraud has been considered and deliberated upon by the Supreme Court in its judgment dated 18.12.2009.
6. The counsel further argued that the application under Order IX Rule 13 read with Order XXXVII Rule 4 CPC only tendered the special circumstances for condonation of delay in filing the leave to defend application and there was no pleading nor any finding returned by

any court with regard to the relationship between the parties and the unambiguous admission made by the respondent in civil proceedings initiated against one Harbhajan Singh that the father of the appellants was not the tenant of the respondent. It is submitted that the respondent has obtained the eviction decree by playing fraud upon the court by concealing that the father of the appellant was not his tenant and also concealing the fact of a family settlement dated 05.10.1963 having been entered into wherein all brothers including the respondent and the father of the appellants, had agreed to relinquish their share in the name of their mother, appellant no.1, Smt. Sumiter Kaur.

7. The counsel for the appellant has vehemently argued that a petition under Section 14(1) (e) of the Delhi Rent Control Act was not maintainable as no jural relationship of landlord and tenant existed between the respondent and the appellants and since the leave to defend application filed by the appellants was rejected, the appellants never got a chance to dispute the maintainability of the eviction petition on the ground of lack of jurisdiction in the absence of any relationship of landlord and between the parties.
8. Mr. Tyagi, counsel for appellants, has strongly urged before this court that the trial court has come to a wrong finding that the eviction decree obtained by playing fraud, barred the jurisdiction of the Civil Court and submits that a decree obtained by playing fraud is not protected by section 43 of the Delhi Rent Control Act. The

counsel contends that the learned trial court has failed to appreciate the trite law that fraud vitiates everything'. Further substantiating his argument, counsel for appellants has placed reliance upon **Hamza Haji v. State of Kerala & Anthr** reported at (2006)7 SCC 416 and more particularly at paras 15 to 24 wherein the Apex Court has held that where a relief is sought from the court by deliberately suppressing a fact which was fundamental to entitlement of relief sought and the claim is founded on a non-existent fact, it amounts to fraud upon the court and such decision is liable to be set aside since a party cannot be allowed to enjoy the fruits of a decision obtained by fraud.

9. The counsel for the appellant has further placed reliance on the case of **N. Khosla v. Rajlakshmi (dead) & Ors**, AIR 2006 SC 1249 and **S.P Chengalvaraya (D) vs, Jagannath (D)**, 1994 RLR (SC) 102 wherein the Apex Court has held that *"it is a settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law and such a decree has to be treated as a nullity by every court and can be challenged in any court or even in collateral proceedings."*
10. It is further contended that the trial court has ignored the settled position of law that section 43 of the Delhi Rent Control Act is applicable only to cases where the landlord-tenant relationship is not disputed. In the present case, no relationship of landlord-tenant existed and thus the rent controller had no exclusive jurisdiction on

the said matter. Reliance is placed upon ***Bindra Watch Company v. Delhi Sikh Gurudwara Board & another*** reported at ILR (1974) II Delhi 219 wherein it was held that where the orders of the Rent Controller are vitiated by fraud, the same can be questioned in an original suit or a collateral proceeding. The relevant extract of the judgment is as under:

“Thus, it is only the correctness of an order of the Controller or an order in an appeal under the Act that cannot be questioned in any original suit or collateral proceeding. In the present cases, the petitioners (plaintiffs-tenants) were not seeking to question the correctness of any finding or the order of the Controller or the jurisdiction of the Controller to entertain the petitions for eviction. They were seeking to challenge the validity of the orders of the Controller firstly on the ground that they were vitiated by fraud and secondly on the ground that the orders passed on the basis of a compromise were without jurisdiction and therefore, nullities as, according to him, the Controller did not satisfy himself about the existence of the ground on which eviction was sought, but merely passed the orders of eviction on the basis of the compromise between the parties. Such grounds do not fall within the prohibition in section 43 and the suits cannot prima facie be said to be barred by the provision in section 43. In *Baijnath Sa v. Ram Prasad*, AIR 1951 Patna 529, (150 a similar view was taken by a Division Bench of the High Court of Patna (BP Sinha and CP Sinha, JJ.) regarding the effect of the provision in section 18(3) of the Bihar Buildings (Lease, Rent and Eviction) Control Act III of 1947 which was similar to the provision in section 43 of the Delhi Rent Control Act, 1958. The said section 18(3) provided that---

“The decision of the Commissioner and subject only to such decision, an order of the Controller shall be final and shall not be liable to be questioned in any Court of law whether in a suit or other proceeding by way of appeal or revision.”

The Division Bench observed in paragraph 7 as under-

“This Act has barred the jurisdiction of the Civil Courts under 18 of the Act. But, it must be conceded, inspite of such a bar, that, if the House

Controller or the Commissioner acts without jurisdiction or in excess of the jurisdiction as given to them under the Act, the Civil Court has jurisdiction to determine whether or not an order passed by the House Controller or the Commissioner is without jurisdiction or in excess of the jurisdiction conferred upon them by the Act.”

However, on the facts of that case, the Division Bench held that the order for eviction passed by the Commissioner was not without jurisdiction, and therefore, it could not be challenged in an original suit. The principle mentioned by the learned Judges in the passage quoted above cannot be disputed, and it is only for that purpose that reference has been made by me to the aforesaid decision. As observed by the Supreme Court in *Kiran Singh and Others v. Chaman Paswan and Other*, AIR 1954 SC 340,342, “it is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity.” If the orders of the Controller in the present cases were without jurisdiction and, therefore, nullities, the same can be questioned in an original suit or a collateral proceeding.”

11. A further reliance is placed upon ***M/s Nehru Place Hotels Limited vs. M/s Bhushan Limited***, [CP 40/2004] wherein the court observed that *“where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. However, a mere wrong exercise of*

jurisdiction does not result in nullity. It would be merely an illegal order/decreed passed in accordance with the procedure laid down by law. In case, it is illegal, incorrect or irregular decree, the only remedy is to get it set aside.[see: Rafique Bibi (dead) by LRs. v. Sayed Waliuddin (Dead) by LRs and others, (2004)1 SCC 287 and Balvant N. Viswamitra and Others v. Yadav Sadashiv Mule (Dead) through LRs and others, (2004)8 SCC 706.]

12. Lastly, it is contended by counsel for appellants that the trial court ought not have rejected the plaint under Order VII Rule 11 CPC and at best, the trial court could have framed issues including an issue on the maintainability of the petition which could have been decided as the preliminary issue. Reliance has been placed upon **Vandana Gyandhar (Ms.) v. Shri Pawan Kumar & Ors.** reported at 2009 X AD (Delhi) 480 and more particularly at paras 16, 17 and 18 which read as under:

“16. While passing the impugned judgment, the trial court lost sight of the fact that the effect of dismissal of a suit is entirely different and distinct from the effect of rejection of the plaint. In the case of Inspiration Clothes & U. v. Colby International Ltd. 88 (2000) D.L.T. 769, a Division Bench of this Court while examining the order of a Single Judge, dismissing the suit of the appellant therein, on an application preferred by the respondent under Order 7 Rule 11 CPC holding that the suit was not maintainable as the appellant did not have a cause of action, observed as below:

Para 10: ...Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is sufficient to set aside the impugned order. Learned Single Judge instead of proceeding to reject the plaint, dismissed the suit, which approach is also erroneous. The effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under

Order 7 Rule 11, CPC, filing of a fresh plaint in respect of the same cause of action is specifically, permitted under Rule 13 of Order 7, CPC. Altogether different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11, CPC, learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in *T. Arvindandam's case* (supra) A.I.R. 1977 S.C. 2421 relied upon by learned Counsel for the appellant, it was held that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious and merit-less, in the sense of not disclosing a clear right to sue, the Trial Court should exercise his power under Order 7 Rule 11, CPC taking care to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable for damages for its acts of omission and commission. It would be an altogether different situation that the plaintiff might not ultimately succeed in obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be maintainable against the defendant and that plaintiff had a cause of action only against defendant's principal and its parent unit in Hong Kong, but such aspect could not have been gone into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages.

(emphasis added)

17. If the trial court was convinced that the plaint read as a whole, did not disclose any cause of action and/or was barred by any law, and was therefore liable to be rejected as vexatious or meritless, the court ought to have exercised its powers Order 7 Rule 11 CPC. Fact remains that a suit once instituted by a litigant, has to be disposed of strictly as per the procedure prescribed in the Code and not in a cursory or summary fashion. The plea of the respondents that the suit of the appellant was barred by any law, could be considered

after having regard to the pleas taken in the plaint. In the present case, the appellant having taken a categorical stand that the issue with regard to return of her stridhan remained alive despite the decree of dissolution of marriage dated 29.6.1995 of the US Court, the matter required to be put to trial. The trial court was not justified in determining the said question at the admission stage itself, and dismissing the suit without affording an opportunity to the parties to complete the pleadings, file documents in support of their stand and without framing any issues.

18. If after framing of issues, including an issue with regard to the maintainability of the suit, the court was of the opinion that no evidence was required on certain issues; the said issues could have been treated as preliminary issues and decided. It is not as if the suit could not have been dismissed after the issues were framed, both on law and facts and certain issues were treated as preliminary issues. At that stage, the court would have had the benefit of looking carefully into the defence of the defendants as well, and could well have upheld their objections as to the maintainability of the suit.”

13. Per contra, it is submitted by the respondent that there is no infirmity in the order of the trial court dismissing the plaint of the appellants under Order VII Rule 11 CPC. The respondent next contends that in the proceedings before the Supreme Court, the Supreme Court had taken all the special circumstances into account including the plea of alleged fraud as well as the objections as regards the landlord-tenant relationship and has correctly dismissed the application for leave to defend. The respondent in person submits that vide Article 141 of the Constitution of India, the law as laid down by the Supreme Court is binding on all the courts and accordingly the trial court rightly rejected the plaint of the appellants herein. It is also pointed out to this court that the

appellants had taken the similar grounds in their written submission before the Supreme Court and the Supreme Court after taking into consideration all the grounds has restored the eviction decree dated 28.02.2001.

14. A heavy reliance has been placed on the decision of the Apex Court in M/s **Atma Ram Builders P. Ltd. v. A.K. Tuli** [Contempt Petition (C) Nos. 140-144/2011 in SLP No. 27755-27759/2010] wherein the Apex Court has held that *“judicial discipline requires that the High Courts should not try to override orders passed by this Court. Such defiant attitude of the High Courts will not be tolerated by this Court”*.
15. It is next contended by the respondent that the plaint of the appellants is further barred by section 43 of the Delhi Rent Control Act which bars the jurisdiction of civil courts to set aside orders passed by the Rent Controller under the said Act. The respondent vehemently argues that the plea of fraud was taken by the predecessor-in-interest of the appellants before the Hon’ble Supreme Court and the Supreme Court after having considered the said plea, has confirmed the eviction decree dated 28.02.2001 and directed the respondents to vacate the premises within six months from the date of the order. The respondents were also directed to file an undertaking to this effect within six weeks which admittedly has not been filed. Reliance has been placed upon **Santanu**

Choudhary v. Subir Ghosh reported in (2007) 10 SCC 253 and more particularly at para 7 which reads as under:

“7. We, accordingly, direct the trial court to cause delivery of vacant possession of the premises in dispute to the petitioner Santanu Chaudhuri (the landlord) by eviction of the respondent Subir Ghosh (the tenant) or anybody else found in occupation of the premises, if necessary, with the help of police, within one month of presentation of a certified copy of this order before the trial court. We make it clear that this order will not prevent or prejudice the petitioner (the landlord) from taking any steps for recovery of rent and mesne profits as he is entitled to in accordance with law. The petitioner will also be entitled to Rs 50,000 as costs for the present proceedings. The respondent Subir Ghosh (the tenant) is granted one month’s time to deposit the costs in the trial court. In case the cost is not deposited as aforesaid, the trial court shall recover the amount from Subir Ghosh (the tenant) in accordance with law and the same shall be paid to the petitioner Santanu Chaudhuri.”

16. The respondent next contends that the suit for declaration and permanent injunction is also barred under Section 11 of the CPC as well as section 4 of the Benami Transactions Act. The respondent further submits that the main thrust of the arguments of counsel for the appellants is that appellants are co-owners in the suit property and in para 11 of the plaint, appellants themselves have pleaded that a partition suit was filed by Mr. Satpal Singh, predecessor-in-interest of the appellants in 1994 and the said suit was dismissed. It also submitted by the respondent that Late Sh. Satpal Singh took his assessed value/compensation of one-sixth share from the Settlement Officer, Ministry of Home Affairs, Department of Internal Security, Rehabilitation Division (Settlement) and thus his successors have no right to again seek

possession of said property. Another suit was filed by Satpal Singh for declaration which was dismissed in 2003 and now the appellants cannot bring a fresh suit on the same cause of action.

17. I have heard the counsel for the appellants and the respondent in person and have perused the entire material placed on record. The contentions of the counsel for appellant may be summarized as under:

- The respondent has obtained the eviction decree by playing fraud upon the court as the appellants are not the tenants at the suit property and are in possession of the property in their own independent right and thus, Section 43 of the Delhi Rent Control is not applicable. Further, in the absence of the landlord-tenant relationship, section 43 cannot be made applicable.
- The term 'special reasons' in paragraph no. 31 of the order of the Supreme Court dated 18.12.2009 refers to the reasons which prevented the appellants from filing an application for leave to defend within the statutory period as the only issue before the Supreme Court was powers of the Rent Controller in condoning the delay in filing of the leave to defend application.
- The Supreme Court has not gone into the merits of the case and the plea of fraud and objections to the landlord-tenant relationship have not been considered by the Apex Court. The title over the suit property is yet to be decided by a competent court.
- The trial court ought not to have rejected the plaint under order VII Rule 11 but should have atleast framed issues including an issue on the maintainability of the suit which could have been decided as a preliminary issue.

18. The contentions of the respondent in person can be summarized as under:

- There is no infirmity in the order of the trial court.
- The Supreme Court has taken into consideration all the pleas and objections raised by the appellants in their leave to defend application, including the plea of fraud, which is evident upon reading para 31 of the judgment and has correctly restored the eviction decree dated 28.02.2001.
- Under Article 141 of the Constitution of India, law laid down by the Supreme Court is binding on all the courts in India and, thus the suit of the appellants is barred by law.
- The suit is also barred under section 43 of the Delhi Rent Control Act, section 11 of the CPC as well as section 4 of the Benami Transactions Act.
- Suit for partition filed by Satpal Singh, predecessor-in-interest of the appellant, stands dismissed in 1994. Another suit for declaration filed by Satpal Singh, predecessor-in-interest of the appellant also stands dismissed in 2003.

19. The main grievance of the appellants , in the present case, is that the trial court, despite making an observation that given that there was in fact no relationship of landlord and tenant existing between the respondent and the appellants, upheld an order that was not maintainable in law only on the premise that since the Hon'ble Supreme Court, after considering special reasons, had held that no sufficient grounds existed for setting aside of the order, it would not be within the jurisdiction of the trial court to set aside the eviction decree.

20. The short question which arises before this Court is whether the learned trial court has correctly applied the provision of Order VII Rule 11 CPC in rejecting the plaint of the appellant as barred by law.
21. The law with regard to Order VII Rule 11 CPC is well settled. While dealing with an application for rejection of plaint under Order VII Rule 11 CPC, the court has to consider only the averments made in the plaint and not the defence of the defendant or the contents of the application under Order VII Rule 11 CPC. In **C. Natrajan v. Ashim Bai** reported at (2007) 14 SCC 183, the Apex Court has observed:

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See *Popat and Kotecha Property v. SBI Staff Assn.*¹)”

22. Further in **Popat and Kotecha Property v. State Bank of India Staff Assn.** reported at (2005) 7 SCC 510, the Apex Court elaborately dealt with the law under Order VII Rule 11. The relevant portion of the judgment is extracted as under:

“12. In the present case the respondent has relied upon clause (d) of Rule 11.

¹ (2005)7 SCC 510

13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In *Saleem Bhai v. State of Maharashtra*² it was held with reference to Order 7 Rule 11 of the Code 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 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 Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal*³ it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapaal*⁴.)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*⁵ only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property*⁶ it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of

² (2003)1 SCC 557

³ (1998)2 SCC 70

⁴ (1977)4 SCC 467

⁵ (1982)3 SCC 487

⁶ (1998)7 SCC 184

interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

23. I have carefully gone through the plaint of the appellants and have also perused the order dated 30.10.2006 passed by the High Court and also the order dated 18.12.2009 passed by the Supreme Court. A careful perusal of the order dated 18.12.2009 makes it clear that the main issue which came up for consideration before the Apex Court was whether the Rent Controller has powers to condone the delay in filling an application for leave to defend and whether the Rent Controller can recall the orders of eviction on an application under Order IX Rule 13 read with order XXXVII Rule 4 CPC. This is evident upon reading of para 6 of the Supreme Court’s order which reads as under:

“6. Against the aforesaid order of the High Court, a Special Leave Petition was filed, which on grant of leave, was heard in presence of the learned counsel for the parties. Before us, the pivotal issues which were raised by the learned counsel for the parties may be stated as follows:-

(i) Whether the Additional Rent Controller, exercising powers and jurisdiction under the Rent ACT, which is a special Act, was justified in setting aside the order of eviction which amounted to restoration of and allowing the application for leave to defend the eviction petition although such application was rejected earlier on the ground of delay.

(ii) Whether the Additional Rent Controller is competent to recall orders of eviction on an application under Order IX Rule 13 read with Order 37 Rule 4 and section 151 of Code and condone the delay in applying for leave to defend when he was not conferred with such power to condone the delay in filing the application for leave to defend the eviction proceedings under the Rent Act specially when such an affidavit (application for leave to defend) was earlier rejection by the Additional Rent Controller, Delhi on the ground of delay.”

24. The Apex Court has observed in paragraph no. 31 of the judgment that apart from the issues of the powers of Rent Controller to condone the delay in filing an application for leave to defend or power of setting aside the decree, the Apex Court has also carefully examined the ‘*special reasons*’ given by the appellant in the application for leave to defend and the application under Order IX Rule 13 read with Order 37 Rule 4 read with Section 151 CPC. The Apex Court has further observed that on a reading of both the applications, it is found that the same defence was taken by the appellant after the order of eviction was passed and thus, was of the view that such reason cannot be considered to be a special reason within the meaning of Order 37 Rule 4 CPC for allowing the appellant to defend the proceedings. Paragraph No. 31 of the order of the Supreme Court reads as under:

“31. That apart, we have also carefully examined the special reason given by the tenant/respondent in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 3 Rule 4 of the Code for

allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act”.

25. The main thrust of the arguments of the counsel for appellants is that the term ‘*special reason*’ has been used by the Apex Court only with regard to the reasons that led to a delay in filing of the application for leave to defend and the plea of fraud being played upon by the court has not been considered by the Apex Court. Order 37 Rule 4 of the CPC deals with the powers of the Court to set aside a decree or to stay its execution thereof under ‘*special circumstances*’ and grant leave to defend to the defendant if the court deems it reasonable. Order 37 Rule 4 reads as under:

“**R.4 Power to set aside decree-** After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.”

26. The term ‘special circumstances’ has nowhere been defined in the Code of Civil Procedure. In ***Rajni Kumar v. Suresh Kumar Malhotra and Anthr*** reported in (2003)5 SCC 315, the Apex Court has elaborately discussed the provision of Order 37 Rule 4 and has also deliberated upon the expression ‘special circumstances’ as it appears in the said provision and held that it is not enough to show the special circumstances that prevented the defendant from applying for leave to defend but the defendant must also show such facts as would entitle him to defend the suit. The relevant extract of the judgment reads as under:

“9. The expression “special circumstances” is not defined in the Civil Procedure Code nor is it capable of any precise definition by the court because problems of human beings are so varied and complex. In its ordinary dictionary meaning it connotes something exceptional in character, extraordinary, significant, uncommon. It is an antonym of common, ordinary and general. It is neither practicable nor advisable to enumerate such circumstances. Non-service of summons will undoubtedly be a special circumstance. In an application under Order 37 Rule 4, the court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the suit.

11. It is important to note here that the power under Rule 4 of Order 37 is not confined to setting aside the ex parte decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the suit. We may point out that as the very purpose of Order 37 is to ensure an expeditious hearing and disposal of the suit filed thereunder, Rule 4 empowers the court to grant leave to the defendant to appear to summons and defend the suit if the court considers it reasonable so to do, on such terms as the court thinks fit in addition to setting aside the decree. Where on an application, more than one among the specified reliefs may be granted by the court, all such reliefs must be claimed in one application. It is not permissible to claim such reliefs in successive petitions as it would be contrary to the letter and spirit of the provision. That is why where an application under Rule 4 of Order 37 is filed to set aside a decree either because the defendant did not appear in response to summons and limitation expired, or having appeared, did not apply for leave to defend the suit in the prescribed period, the court is empowered to grant leave to the defendant to appear to the summons and to defend the suit in the same application. It is, therefore, not enough for the defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the suit. In this respect, Rule 4 of Order 37 is different from Rule 13 of Order 9.

12. Now adverting to the facts of this case, though the appellant has shown sufficient cause for his absence on the date of passing ex parte decree, he failed to disclose facts which would entitle him to defend the case. The respondent

was right in his submission that in the application under Rule 4 of Order 37, the appellant did not say a word about any amount being in deposit with the respondent or that the suit was not maintainable under Order 37. From a perusal of the order under challenge, it appears to us that the High Court was right in accepting existence of special circumstances justifying his not seeking leave of the court to defend, but in declining to grant relief since he had mentioned no circumstances justifying any defence.”

27. Adverting to the present case, a perusal of the application for leave to defend makes it evident that Sh. Satpal Singh, predecessor-in-interest of the appellants had pleaded his illiteracy as the reason for delay in filing the leave to defend application and in para no. 10 of the said application, he had raised the plea of non-existence of landlord and tenant relationship. Para 10 of the said application reads as under:

“10. The respondent is desirous of contesting these proceedings, more so because there does not exist relationship of landlord and tenant between the petitioner and the respondent either in respect of the premises in suit or even otherwise.”

28. A perusal of the affidavit filed along with the application for leave to defend further makes it clear that Late Sh. Satpal Singh, predecessor-in-interest of the appellants, had raised not only the plea of non-existence of landlord-tenant relationship but has also raised the plea of fraud being played by the respondent upon the court by concealing the material fact that late Sh. Satpal Singh was his brother and not a tenant. The relevant paragraphs of the affidavit are extracted as under:

“(c) At the very outset, I state and submit that the petitioner is guilty of *suppressio-veri* and *suggestio-falsi*. He has deliberately concealed from this Hon’ble Court relevant and material facts. Contemporaneously the petitioner was knowingly and deliberately made false allegations in the body of the petition (for no purpose but to over reach this Hon’ble Court) the petitioner, by his own conduct, has disintitiled himself from seeking any relief from this Hon’ble Court.

(g) Without prejudice to the foregoing, I am further advised to state that this petition, as the same is framed today, cannot proceed under the summary procedure prescribed in Section 25 B of the Act for the provisions of this Section are available to the petitioner/landlord if and only if the action is instituted against the tenant and none else.

(h) The present petitioner was examined as his own witness (PW-8) in the court of learned Rent Controller of Delhi in the eviction petition titled as “Sh. Priti Pal Singh Vs. Sh. Harbhajan Singh” being E-202 of 1989. The petitioner herein made judicial admissions particularly in his cross-examination, relevant portion of which reads as under:

“.....The portion on the ground floor mark as B & G along with kitchen, bath and WC on the front site is with Shri Satpal Singh S/o Sh. Harnam Singh (my younger brother). He is not my tenant. The portion marked.....The portion on the first floor mark as J,H and the room in the front in site plant Ex. PW-8/2 is with my brother Satpal Singh. No document in the shape of licence deed, rent deed, family settlement etc. has been executed between me and Satpal Singh.....There was an agreement between me and Satpal Singh in the year 1976 whereunder Satpal Singh has shown his inability to pay the rent and it was at that time that I allowed him to live in the premises without any rent and as my younger brother. This agreement was only oral one. My relations with Satpal Singh are neither bad nor good nowadays. The portion on the first floor in site plan Ex.PW-8/2 was given by me to my brother Satpal Singh on brotherly relations in 1988-89, and about one year prior to my retirement.....”

(i) I further state that the petitioner, who is my real elder brother, has instituted this petitioner with oblique motives (as also for sinister purposes) under the summary procedure prescribed in the Act in order to surreptitiously obtain against me an order of eviction qua the premises in suit which I state and submit are my exclusive property and are in my actual physical possession, in my own independent right, and not as a tenant under the petitioner.

(j).....The petitioner had concealed from this Hon'ble Court that he is my real elder brother and there is no relationship of landlord and tenant between me on one hand and petitioner on the other hand, qua the premises subject matter of these proceedings. The petitioner has for his selfish ends, distorted, concealed and/or camouflaged facts in order to achieve his evil designs.

(p).....I maintain that the petitioner had not approached this Hon'ble Court with clean hands. He has spared no attempt to over reach this Hon'ble Court and/or to perpetuate a fraud upon this Hon'ble Court. As such, I submit and maintain that the petitioner is not entitled to any relief in these proceedings."

29. Para 31 of the judgment of the Supreme Court begins with the words *"That apart, we have also carefully examined the special reason given by the tenant/respondent in the original application for leave to contest....."* which would show that after giving their finding on the main issue, the Supreme Court also considered the matter on merits and observed that the defence taken by the tenant cannot be considered to be a special reason within the meaning of Order 3 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act".
30. In view of the observations made above, it cannot be said that reference to Special circumstances in the order dated 18.12.2009 by the Supreme Court were only restrained to Special Circumstances for delay in filing the application for leave to defend. A complete reading of the order dated 18.12.2009 passed by the Apex Court more particularly para 31 would show that in addition to the main issue before the Supreme Court which was highlighted in

para 6 of the judgment the Apex Court also considered the special reasons for grant of leave. The Apex Court while dealing with the application for leave to defend and the application under Order 37 Rule 4 has not only considered the special reasons that prevented the appellants from filing the leave to defend application within the statutory period of fifteen days but has also taken into consideration the objections of the appellants as regards their status as a tenant in the suit premises as well the plea of fraud been played upon by the respondent by concealing the fact that Late Sh. Satpal Singh, father of the appellants no. 2 to 6, was his real brother and not a tenant which was highlighted by the appellant in the application relevant paras of which have been extracted above. It is only after taking into consideration the said objections and pleas that the Apex Court has restored the eviction decree dated 28.02.2001 and has directed the appellants to vacate the tenanted premises and six months time was granted

31. Thus, I do not find any infirmity in the order of the trial court dated 28.01.2010. Accordingly, the appeal stands dismissed.

G.S.SISTANI, J.

May 30, 2011
'ssn/msr'