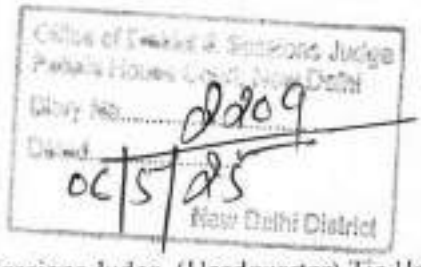
D-2 disposed of

HIGH COURT OF DELHI AT NEW DELHI

No. 32872 /Crl-II/DHC Dated: 6/5/25

From :

The Registrar General,
Delhi High Court,
New Delhi.



To:

1. The Ld. Principal District & Sessions Judge, (Headquarter) Tis Hazari Courts Complex, Delhi.
2. The Ld. Principal District & Sessions Judge, (South-West), Dwarka Courts Complex, New Delhi.
3. The Ld. Principal District & Sessions Judge, (West), Tis Hazari Courts Complex, Delhi.
4. The Ld. Principal District & Sessions Judge, (East), Karkardooma Courts Complex, Delhi.
5. The Ld. Principal District & Sessions Judge, (South), Saket Courts Complex, New Delhi.
6. The Ld. Principal District & Sessions Judge, (North-West), Rohini Courts Complex, New Delhi.
7. The Ld. Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
8. The Ld. Principal District & Sessions Judge, (North-East), Karkardooma Courts Complex, Delhi.
9. The Ld. Principal District & Sessions Judge, (North), Rohini Courts Complex, Delhi.
10. The Ld. Principal District & Sessions Judge, (Shahdara), Karkardooma Courts Complex, Delhi.
11. The Ld. Principal Distreit & Sessions Judge, (New Delhi), Patiala House Courts Complex, New Delhi.
12. The Ld. Principal District & Sessions Judge, (South-East), Saket Courts Complex, New Delhi.
13. The Ld. Principal Judge (HQ) Family Courts, Dwarka, Delhi
14. The Member Secretary, Delhi State Legal Services Authority, Patiala House, New Delhi.
15. The Secretary, Delhi High Court Legal Services Committee (DHCLSC), High Court of Delhi, Delhi.

Sir/Madam,

I am directed to forward a copy of judgment/order dated **17.03.2025** passed by **Hon'ble Mr. Justice Dinesh Kumar Sharma,** in **Crl.M.C. No. 6572/2024, Crl.M.A.25124/2024** with a request to circulate it amongst the Judicial Officers under them and officers who are on deputation to other departments for information.

Ld. OSD/Gen. 06/05/2025

Yours faithfully

3/5/2025

A.R (Crl-II)
For Registrar General

Encl : Copy of order dated : **17.03.2025** and Memo of Parties.

PD & SJ (NDD) (PHC) 06/05/2025

5

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C. No. _____ OF 2024

IN THE MATTER OF:

Sudesh Chhikara ... Petitioner

VERSUS

State (Govt. of NCT of Delhi) and Anr. ... Respondents

MEMO OF PARTIES

Sudesh Chhikara
Wd/o Late Sh. Sanjeev Kumar,
R/o B-128, Ganesh Nagar,
Tilak Nagar, Delhi-110018
Temporarily At:
T-175, DLF Capital Greens,
Moti Nagar,
Delhi-110015 ... Petitioner

Versus

1. State (Govt. of NCT of Delhi)
   Through S.H.O. P.S. Tilak Nagar, Delhi
   E-mail: dhcprosecutiondelhipolice@gmail.com

2. Baljeet Singh S/o Late
   Sh. Hari Singh

R/o B-128, Ganesh Nagar
Tilak Nagar, Delhi-110018

... Respondents

9854 ~~45~~ 4

Jaipal Singh, Advocate
Enrol. No. D/322-A/78
T-175, Capital Greens,
Moti Nagar, New Delhi-110015
M: 9958697032
E-mail:jaipalmalik100@gmail.com

New Delhi
Dated: 20.08.2024

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

RESERVED ON – 02.12.2024

% ***PRONOUNCED ON – 17.03.2025.***

\+ CRL.M.C. 6572/2024, CRL.M.A. 25124/2024

SUDESH CHHIKARA .....Petitioner

Through: Mr. Jaipal Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) AND ANR .....Respondents

Through: Mr. Hemant Mehla, APP for State.
Mr.Kanhaiya Singhal, Amicus Curiae along with Mr.Ujwal Ghai, Mr. Pulkit Jolly and Ms. Tamanna Agarwal, Advs.
Mr. Baljit Singh, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J :

1. The present petition has been filed under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred as BNSS*) challenging the order dated 07.06.2024 passed by the Additional Chief Metropolitan Magistrate (ACMM), West Delhi in Case M- 17/2024 titled *Baljeet Singh vs. Sudesh Chhikara.* Learned ACMM vide the impugned order, upon a transfer application filed by Respondent no.2, transferred the complaint case bearing CC No. 6895/2019 from the

S~

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

RESERVED ON – 02.12.2024

% ***PRONOUNCED ON – 17.03.2025.***

\+ CRL.M.C. 6572/2024, CRL.M.A. 25124/2024

SUDESH CHHIKARA .....Petitioner

Through: Mr. Jaipal Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) AND ANR .....Respondents

Through: Mr. Hemant Mehla, APP for State.
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Mr. Baljit Singh, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J :

1. The present petition has been filed under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred as BNSS*) challenging the order dated 07.06.2024 passed by the Additional Chief Metropolitan Magistrate (ACMM), West Delhi in Case M- 17/2024 titled *Baljeet Singh vs. Sudesh Chhikara*. Learned ACMM vide the impugned order, upon a transfer application filed by Respondent no.2, transferred the complaint case bearing CC No. 6895/2019 from the

court of learned MM-07, West, Tis Hazari Court to the Court of learned MM-02 (Mahila Court), Tis Hazari Courts, Delhi wherein another connected matter bearing MC No.533/2020 was pending adjudication between the parties.

2. Shorn of the details, Respondent No.2 is the father-in-law of the Petitioner and they are locked in several litigations pertaining to matrimonial disputes between the Petitioner and son of Respondent No.2. The present petition has been filed predominantly on the ground that under Section 410 Code of Criminal Procedure 1973 (*hereinafter referred as Cr.PC)*, the Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate has no power to transfer a case from one criminal Court to another criminal Court in its jurisdiction. The petitioner has submitted that as per Section 19(3) of the Cr.PC., the Chief Metropolitan Magistrate has jurisdiction only to the extent of distribution of business among the Metropolitan Magistrate. It has also been submitted that Ld. ACMM did not even issue notice before passing the impugned order.

3. The question involved in the present petition is relating to the power of the Chief Metropolitan Magistrate/Additional Chief Metropolitan Magistrate relating to transfer of case from one Court of Metropolitan Magistrate to another Court of Metropolitan Magistrate. Since the case was of importance, this Court appointed Sh. Kanhaiya Singhal, Advocate as an Amicus Curiae. The Court records appreciation for Sh. Kanhaiya Singhal, Advocate who rendered the able assistance to the Court.

4. Before proceeding further it is necessary to examine the relevant provision of the Code of Criminal Procedure, 1973 and Bhartiya Nagrik Suraksha Sanhita, 2023.

Relevant provisions of the Code of Criminal Procedure, 1973 read as under;

> *"Section 12 Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.*
>
> *1. In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.*
>
> *2. The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.*
>
> *3. (a)The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.*
>
> *(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-Divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.*
>
> *Section 15. Subordination of Judicial Magistrates.*
>
> *1. Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate*

shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

2. The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

Section 17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.

1. The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

2. The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

Section 19. Subordination of Metropolitan Magistrates.

1. The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

2. The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

3. The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

Section 410. Withdrawal of cases by Judicial Magistrate.

1. Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

2. Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such cases himself.

Relevant provisions Of Bharatiya Nagarik Suraksha Sanhita, 2023

Section 10. Chief Judicial Magistrate and Additional Chief Judicial Magistrate (Pari Materia to Sec 12 Cr.p.c)

1. In every district, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

2. The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct.

3. The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

4. Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

Section 13. Subordination of Judicial Magistrates

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Sanhita, as to the distribution of business among the Judicial Magistrates subordinate to him

Section 450. Withdrawal of cases by Judicial Magistrates.

1. Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

2. Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 212 to any other Magistrate and may inquire into or try such cases himself."

5. Before proceeding further it is also necessary to refer to the power conferred to the Supreme Court, High Courts and Sessions Courts for transfer of the Criminal Cases under Chapter-XXXIII BNSS 2023 and under Chapter-XXXI of Cr.PC, 1973. Section 406 Cr.PC and Section 446 BNSS, 2023 confers power upon the Supreme Court to transfer any particular case or appeal from one High Court to another High Court or from Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court by an order under this section, if it is expedient for the interest of justice. Similarly, Section 407 Cr.PC and Section 447 BNSS, 2023 confers power upon High Court to transfer cases and

appeal, if (i) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or; (ii) that some question of law of unusual difficulty is likely to arise, or (iii) that an order under this section is required by any provision of this Code or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

6. Section 408 Cr.P.C. and Section 448 BNSS 2023 confers power upon Sessions Judge to pass an order of transfer if it is expedient for the ends of justice, of any particular case from one Criminal Court to another Criminal Court in his sessions division. It is pertinent to mention here that the High Court and the Sessions Judge may exercise its jurisdiction on the report of the lower Court or on the application of a party interest or on its own initiative. Thus, the Code of Criminal Procedure has specifically conferred the power upon Supreme Court, High Court and Sessions Court of transfer of cases. Section 409 and 410 Cr.PC and Section 449 and 450 BNSS 2023 have conferred power of withdrawal of cases and appeal by the Session Judges and the Judicial Magistrates respectively. The basic question is whether the Chief Judicial Magistrate has the power to transfer the case from one Court to another Court on an application being moved or on its own.

7. Before proceeding further it is also necessary to refer to the power to be exercised by the Additional Chief Metropolitan Magistrate. It is pertinent to mention here that in the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 10 (2) provides that the High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the

powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct. Thus in this regard, the High Court in its administrative side is required to pass an order under Section 10(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as to the extent of power of an Additional Chief Judicial Magistrate.

8. Section 13(2) of BNSS, 2023 also makes it clear that the Chief Judicial Magistrate has been authorised as to the distribution of business among the Judicial Magistrates subordinate to him. The legislature in its wisdom has not conferred this power on the Additional Chief Judicial Magistrate, therefore, in absence of any special order from the High Court only the Chief Judicial Magistrate has been made empowered as to the distribution of business.

9. It is pertinent to mention here that the subordination of the Additional Chief Judicial Magistrate to the Chief Judicial Magistrate is only in regard to the administrative functions. In regard to the judicial functions, Section 10(2) specifically provides that the Additional Chief Judicial Magistrate shall have all the powers of the Chief Judicial Magistrate. In this regard, reference can also be made to ***R.D. Jain & Co. vs. Capital First Ltd. & Ors.,*** (2023) 1 SCC 675 wherein it was *inter alia* held that the judicial powers and powers under the Cr.PC which may be exercised by the Chief Metropolitan Magistrate, can be exercised by the Additional Chief Metropolitan Magistrate also. It is pertinent to mention here that it was further *inter alia* held that Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be

exercised under the Cr.PC are concerned. The Apex Court further *inter alia* stated that the Chief Metropolitan Magistrate in addition, may have administrative powers, however, for all other purposes and more particularly the powers to be exercised under the Cr.PC both are at par. The Apex court concluded that therefore the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan Magistrate in so far as exercise of judicial powers are concerned. Thus it is no more *res integra* that as far as judicial powers are concerned Additional Chief Judicial Magistrate is not subordinate to the Chief Metropolitan Magistrate. However, in relation to the administrative functions to be exercised by the Chief Judicial Magistrate under the BNSS, 2023, the same can be exercised by Additional Chief Judicial Magistrate only to the extent, an order to this effect is passed by the High Court. In this regard reference may again be made to Section 10(2) BNSS, 2023 which *inter alia* provides that an Additional Chief Judicial Magistrate "shall have all or any of the powers of a Chief Judicial Magistrate", "as the High Court may direct". Thus the legislature in its wisdom has not conferred "all" powers and stated that "all or any of the powers". Any word in the legislature cannot be considered to be superfluous ordinarily. Therefore, an order of the High Court in its administrative side is required to be passed regarding "All or any of the powers" to be exercised by the Additional Chief Judicial Magistrate.

10. Now coming to the core question that whether the Chief Judicial Magistrate has the power to transfer the case from one Court to another while exercising its power under Section 410 Cr.P.C./Section 450

BNSS, 2023. In this regard, High court of Karnataka in ***M/s Radical Works Pvt. Ltd. v. Sri Padmanabh T.G***, in Crl.P. No. 1291/2023, ***A. K. Singh, Special Railway Magistrate, Jabalpur vs. Virendra Kumar Jain, Advocate-*** MANU/MP/0623/1999 : 2001 (4) M.P.L.J. 324, ***Chandrkantbhai Bhaichandbhai Sharma vs. State of Gujarat and Another*** in Special Criminal Application (Quashing) No.4884/2015 and ***Mahfooskhan Mehboob Sheikh vs. R. J. Parakh-*** MANU/MH/0304/1979 : LAWS(BOM)-1979-11-8, the Court inter alia held as under:

> *"6. Chapter XXXI of Cr.P.C. provides for Transfer of Criminal Cases. Section 406 of Cr.P.C. in the said Chapter provides for the power of Supreme Court to transfer cases and appeals from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Section 407 of Cr.P.C. provides for power of High Court to transfer cases and appeals as provided therein. However, no application for transfer of a case from one Criminal Court to another Criminal Court in the same sessions division shall be entertained by the High Court unless an application for transfer has been made to the Sessions Judge and rejected by him. Section 408 of Cr.P.C. provides for power of the Sessions Judge to transfer cases and appeals from one Criminal Court to another Criminal Court in his sessions division. Sections 409 and 410 of Cr.P.C. deals with the powers of the Sessions Judge and Chief Judicial Magistrate or Chief Metropolitan Magistrate for withdrawal of the cases/appeals. Section 411 of Cr.P.C. provides for making over or withdrawal of cases by Executive Magistrates and Section 412 of Cr.P.C. provides that a Sessions Judge or Magistrate making an order under Sections 408, 409, 410 or Section 411 of Cr.P.C. shall record his reasons for making it.*

7. In the present case, an application has been filed by respondent herein before the Court of Chief Metropolitan Magistrate, Bengaluru, for transfer of two cases which were pending before two different Courts of Additional Chief Metropolitan Magistrate. The Court of Chief Metropolitan Magistrate in exercise of his power under Section 410 of Cr.P.C. has allowed the prayer made by the respondent herein and has ordered transfer of the two criminal cases pending before two different Courts of Additional Chief Metropolitan Magistrates to another Court of Additional Chief Metropolitan Magistrate.

8. The power of Chief Judicial Magistrate/ Chief Metropolitan Magistrate under Section 410 of Cr.P.C. for transferring of pending criminal cases from one Court of Additional Chief Metropolitan Magistrate to another Court of Additional Chief Metropolitan Magistrate was considered by the High Court of Madhya Pradesh in the case of A. K. Singh (supra) and in paragraphs No.10 and 11, it is observed as follows:-

> *"10.....The Chief Judicial Magistrate appears to have committed severe illegalities; firstly, the transfer petition moved before him was under section 410, Criminal Procedure Code, Under that provision the jurisdiction of the Chief Judicial Magistrate is administrative in nature. It is to keep equilibrium of cases amongst the various Magistrates working under him in the district. He can withdraw cases from one Magistrate and send them to another. This provision does not empower a Chief Judicial Magistrate to exercise power of transfer on complaint by one of the parties. For that, the remedy to the aggrieved party is under section 408, Criminal Procedure Code. That power is exercised by the Sessions Judge. He can transfer cases from one criminal Court to another in his Session Division 'when he considers it expedient to do so for the ends of Justice'. He can transfer a particular case from one court to another. He may act*

either on the report of the lower court or on the application of the party interested or on his own initiative. So, this is the provision which provides remedy to an aggrieved person, who feels to have lost faith in a particular criminal court for one or other reason. His remedy is not under section 410, Criminal Procedure Code.

11. In view of this scope of provisions of sections 408 and 410, Criminal Procedure Code the Chief Judicial Magistrate should not have acted on a transfer petition based on grievances against the trying Magistrate. The best course was to leave the complainant to move the Sessions Court under section 408, Criminal Procedure Code."

9. The High Court of Gujarat in the case of Chandrkantbhai Bhaichandbhai Sharma (supra) in paragraphs No.16 and 21, has observed as follows:-

"16. Sections 406, 407 and 408 respectively relate to the power of the Supreme Court, High Court and Sessions Judge to transfer cases and appeals. On the other hand, Sections 409. 410(1) and (2) and 411 relate to withdrawal of cases or recalling of cases which had been made over by the Sessions Judge, Chief Judicial Magistrate, Judicial Magistrate and the Executive Magistrate, for being thereafter tried either by himself or being made over to another Court for trial. The clear contrast in the language employed by the Legislature in the two sets of section is indicative of the difference in the nature of the power conferred thereunder. I note below the differences:

(i) Sections 406, 407 and 408 use the words "whenever it is made to appear" while referring to the power of the Supreme Court, High Court or the Sessions Judge to transfer cases. Sections 409. 410 and 411 significantly do not use these words.

(ii) The captions of Sections 406, 407 and 408 speak of exercise of 'power' to transfer, Sections 409, 410 and 411 do not speak of 'power' but merely refer to 'withdrawal' or 'recalling'.

(iii) Sections 406, 407 and 408 contemplate the 'power to transfer' being exercised on an application by a 'party interested' (Sections 407 and 408 also contemplate the 'power to transfer' being used on a report of the Lower Court or suo motu; and Section 406 contemplate the power of transfer being used on an application by the Attorney General). These Sections clearly imply a need for hearing before transfer. On the other hand, Sections 409, 410 and 411 contemplate exercise of the power of withdrawal/recalling cases in a routine manner in the day to day administration. They do not contemplate any hearing to the parties interested.

It is clear from the above that the power to be exercised under Sections 406, 407 and 408 is a judicial power to be invoked and exercised in the manner state therein. On the other hand, the power of withdrawing or recalling of cases under Sections 409, 410 and 411 is an administrative power, complementary to the administrative power of making over cases vested in the Chief Judicial Magistrate/Magistrate and the Sessions Judge under Sections 192 and 194 of the Code.

XXXX

21. In view of the above discussion, the position may be summarized thus:

(a) A Sessions Judge in exercise of judicial power under Section 408 of the Code may transfer any case pending before any Criminal Court in his Sessions Division to any other Criminal Court in his Sessions Division. That would mean that he can transfer even those cases where the trial has commenced from one Additional Sessions Judge in his

Sessions Division. The transfer of a case under Section 408 of the Code being in exercise of a judicial power, it should be preceded by a hearing to the parties interested. Further, the reason or why it is expedient for the ends of justice to transfer the case, has to be recorded.

(b) The judicial power under Section 408(1) and the administrative power under Section 409(1) and (2) are distinct and different and Section 408 is not controlled by Section 409(2). A sessions Judge in exercise of his administrative power under Section 409 may:

> *(i) withdraw any case or appeal from any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him;*
>
> *(ii) recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him;*
>
> *(iii) recall any case or appeal which he has made over to any Additional Sessions Judge, before trial of such case or hearing of such appeal has commenced before such Judge and try the case or hear the appeal himself or make it over to another Court for trial or hearing in accordance with the provisions of the Code. NO hearing need be granted to any one before exercising such power. But the reason therefore shall have to be recorded having regard to Section 412."*

10. The judgment in the case of Mahfooskhan Mehboob Sheikh (supra) rendered by the High Court of Bombay cannot be made applicable to the facts of the present case as the said judgment was rendered in the background that a Notification under Section 19(2) of Cr.P.C. was issued by the High Court of Bombay defining the extent of subordination of the Courts of Additional Chief Metropolitan Magistrates to the Court of Chief Metropolitan Magistrate. However, the same is not the position in the present case as no such Notification is issued

by this Court. In addition to the same, I am not in agreement with the reasoning assigned by the High Court of Bombay holding that the Court of Chief Metropolitan Magistrate is empowered under Section 410 of Cr.P.C. to entertain an application seeking transfer not only on the administrative ground but also on the judicial ground.

11. The High Court of Madhya Pradesh and High Court of Gujarat in the case of A. K. Singh (supra) and Chandrkantbhai Bhaichandbhai Sharma (supra) have laid down the correct position of law and I am in complete agreement with the same. Under the circumstances, I am of the opinion that the Court of Chief Metropolitan Magistrate, Bengaluru, in exercise of his power under Section 410 of Cr.P.C. could not have passed the order impugned. Therefore, the said order cannot be sustained. Accordingly, the petition is allowed. The impugned order dated 13.01.2023 passed by the Chief Metropolitan Magistrate, Bengaluru in Crl. Misc. No.5901/2022 is set- aside."

11. This Court considers that the view taken by the High Court of Karnataka in ***M/s Radical Works Pvt. Ltd.*** *(Supra)* and the view taken by the High Court of Madhya Pradesh in ***A. K. Singh, Special Railway Magistrate, Jabalpur*** *(Supra)* and the High Court of Gujarat in ***Chandrkantbhai Bhaichandbhai Sharma*** *(Supra)* is in sync with the provisions of the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023. The Court is of the firm view that since the legislature in its own wisdom has conferred the power of the transfer only to Supreme Court, High Courts and the Sessions Court, it cannot be given by way of inference to the Court of Chief Judicial Magistrate. The law of interpretation does not provide interpretation of any provision which in any manner

contravenes the intention of the legislature. The legislature could have specifically given the power of transfer to the Chief Judicial Magistrate if it would have considered it proper to do so. Thus, the Court finds itself to be fully in agreement with the view taken by the High Court of Madhya Pradesh in ***A. K. Singh, Special Railway Magistrate, Jabalpur*** *(Supra)* followed by the High Court of Gujarat in ***Chandrkanthbhai Bhaichandbhai Sharma*** *(Supra)* and the High Court of Karnataka in ***M/s Radical Works Pvt. Ltd.*** *(Supra).* Even otherwise, the present impugned order has to go as the learned Additional Chief Metropolitan Magistrate did not even consider it necessary to issue the notice before passing the impugned order.

12. In these facts and circumstances, on the basis of the discussions made hereinabove, the Court passes the following directions:

(i) under Section 410 Cr.PC. and Section 450 BNSS the power conferred upon the Chief Judicial Magistrate is only administrative in nature. The Court of Chief Judicial Magistrate cannot "transfer" a case from one Court or another upon an application being moved or *suo moto*.

(ii) the Additional Chief Judicial Magistrate cannot exercise the administrative power of transfer of case from one Court to another within its jurisdiction unless an order is passed by the High Court under Section 10(2) BNSS, 2023.

(iii) the Respondent No.2 shall be at liberty to move a proper application before Ld. Principal District and Sessions Judge under Section 448 BNSS, 2023 for transfer of case from one Court to

another. Learned Principal District and Sessions Judge may exercise the jurisdiction without being influenced by the order of this Court in accordance with law.

(vi) The copy of the order be sent to Ld. Registrar General for appropriate action and circulation of copy of judgment to the judicial officers subject to the directions of Hon'ble the Chief Justice.

13. The present petition along with pending application(s), if any, stands disposed of.

[redacted]

DINESH KUMAR SHARMA, J

MARCH 17, 2025
Ankit/KR

TRUE COPY

Examiner

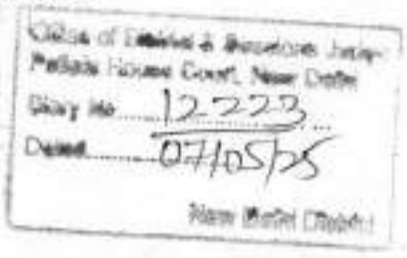
IN THE HIGH COURT OF DELHI AT NEW DELHI

2486-2498

No._____/DHC/Gaz.IB/G-2/SC-Judgment/2025 Dated: 06, May, 2025.

From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.



To,

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
3. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
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11. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub: Order dated 07.04.2025 passed by Hon'ble Supreme Court of India in SLP(Civil) No. 9975 of 2025 titled "Rajiv Ghosh Vs Satya Naryan Jaiswal".

Sir/ Madam,

I am directed to forward herewith a copy of order dated 07.04.2025 passed by Hon'ble Supreme Court of India in SLP(Civil) No. 9975 of 2025 titled "Rajiv Ghosh Vs Satya Naryan Jaiswal", with the request to circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Ld. OIC/Gaz
07.05.2025
(PD&ST/NDD/PHC)
07.05.2025

Yours faithfully,

(Vinay Sharma)
Deputy Registrar(Gazette-IB)
For Registrar General.

Encl: As above.

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL JURISDICTION

Certified to be true Copy
Assistant Registrar (Judl.)
Supreme Court of India

SPECIAL LEAVE PETITION (CIVIL) 9975 OF 2025
(DIARY NO. 8323 OF 2025)

Rajiv Ghosh .....Petitioner

Versus

25052878

Satya Naryan Jaiswal .....Respondent

ORDER

1. Delay condoned in filing Special Leave Petition.

2. This petition arises from the judgment and order passed by the High Court at Calcutta (Civil Appellate Jurisdiction) dated 14.11.2024 in FAT 7 of 2024 with IA No. CAN 1 of 2024 by which the appeal filed by the petitioner-herein came to be dismissed thereby affirming the judgment and decree of eviction passed by the Vth Bench, City Civil Court at Calcutta, District Calcutta dated 2nd December 2023 in title suit no. 1068 of 2021.

3. For the sake of convenience, the petitioner-herein shall be referred to as original defendant and the respondent-herein shall be referred to as original plaintiff.

4. It appears from the materials on record that the plaintiff is the lawful owner of the suit premises in which the defendant claims to be the lawful

tenant. The plaintiff instituted title suit no. 1068 of 2021 for recovery of possession and mesne profits against the defendant. The father of the defendant, Late Ranjan Ghosh was a regular tenant under the plaintiff in respect of the suit premises at a monthly rent of Rs. 1700 including corporation taxes.

5. Ranjan Ghosh, the original tenant passed away on 13.07.2016. It appears that the defendant being the son of Ranjan Ghosh was residing in the suit premises up to the date of demise of his father.

6. The plaintiff served a notice dated 20th July 2018 to the defendant informing him that since the original regular tenant, Ranjan Ghosh passed away on 13.07.2016 and the defendant being the son of the regular tenant who at the time of demise of the regular tenant was residing in the scheduled property he can at best take the benefit of his statutory right of inherited tenancy up to 5 years from the date of death of his father, Ranjan Ghosh on 13.07.2016.

7. The notice further informed the defendant that he cannot be regarded as tenant within Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

8. The said notice was received by the defendant on 21.07.2018, however, the defendant failed to give any satisfactory reply.

9. In such circumstances referred to above, the plaintiff had to institute the title suit for recovery of the possession. The defendant filed his written statement and in the same he is said to have admitted few facts arising

thereof. The defendant in his written statement admitted the following claims of the plaintiff.

a) the defendant unequivocally admitted in paragraph no. 10(a) of his written statement that Ranjan Ghosh was the sole tenant in respect of the suit property. The said Ranjan Ghosh passed away in 13.07.2016 leaving behind the defendant as his heir and legal representative.
b) The defendant admitted that the plaintiff is the owner of the scheduled property and the rent was paid till May 2021 to the plaintiff.

10. In view of the aforesaid admissions made by the defendant in his written statement, the plaintiff preferred an application before the trial court under Order XII Rule 6 of the Civil Procedure Code and prayed for a decree upon admission.

11. The application filed by the plaintiff under Order XII Rule 6 of the CPC was opposed by the defendant by filing reply which reads thus:

"1. That the said application is neither maintainable in law nor on facts and the same is bad, frivolous, vexatious, baseless, unfounded and misconceived as such the said application is liable to be rejected with cost to the defendant.
2. That there is no admission in the pleadings on behalf of the defendant, C.P. Code does not define the expression "admission" Section 17 of the Indian Evidence Act defines admission as a statement made in the oral, documentary or electronic form suggesting an inference to a fact in issue or relevant fact. Section 23 of the Indian Evidence Act lists the circumstances under which an admission will be relevant in civil cases. However, the proviso to the Section states that the Court has discretionary power to require the alleged admitted, facts to be proven by means other than such admission. It is pertinent to note that the Rule provides that Court "may" pass a judgment or order based on the admission. Thus, it is clear that the legislative intent is to confer a discretionary power of the Court and judgment based on admission cannot be clarified as a matter of right. The legislative intent is further clarified by the proviso to Order 6 Rule 5. The

proviso provides that even, where a fact has been admitted by an admission, the Court has discretionary power to require the admitted fact to be proved by any other means.

3. That the defendant states that there are material issues involved in the instant suit which are very much triable therefore, the Ld. Court should not, proceed with the passing, a decree under Order 12 Rule 6 of C.P.Code. In order to fair disposal of the instant suit, the instant suit needed to be decided by a full fledged trial and an opportunity to be given the defendant to lead evidence for the interest of justice, therefore, the said application is liable to be rejected in limine.

4. With reference to the statements made in paragraph Nos. 1, 2 and 3 of the said application, the defendant denies the same save and except what are matters of record and calls, upon the plaintiff to strictest proof thereof.

5. With reference to the statements made in paragraph Nos. 5 and 6 of the said application, the defendant denies the same save and except what are matters of record and calls upon the plaintiff to strictest proof thereof. The defendant states that by his Written Statement, filed in Court has been categorically challenged the allegations made by the Plaintiff which is required to be proved by way of an evidence by the parties of this suit.

6. With reference to the statements made in paragraph No. 7 of the said application, the defendant denies the same save and except what are matters of record.

7. With reference to the statements made in paragraph No. 8 of the said application, the defendant denies the same.

8. With reference to the statements made in paragraph No. 9 of the said application, the defendant denies the same save and except what are matters of record and calls upon the plaintiff to strictest proof thereof.

9. With reference to the statements made in paragraphs No. 10, 11 and 12 of the said application, the defendant denies the same. The defendant denies that he admitted anything in his pleadings that the defendant is a trespasser as alleged, on the other hand, he categorically stated that he is a tenant in respect of the suit premises and he paid rent to the plaintiff in respect of the suit premises. Moreover, the defendant filed an application u/s 7(1) & 7(2) of the W.B.P.T. Act before this Ld. Court for payment of current rent as well as arrears rent if any due and payable and those

applications are pending before this Ld. Court. The defendant states that the facts of this case as made out in the plaint should be considered by this Ld. Court as a whole for the interest of justice because the cause of action of this suit arose on the bundle of facts. The defendant never admitted in pleadings that he is enjoying the suit premises as trespassed. Therefore, without taking an evidence, the instant suit cannot be adjudicated properly, therefore the said application is liable to be rejected with cost.
It is prayed that the said application be rejected with cost."

12. The trial court adjudicated the application and ultimately decreed the suit having regard to the specific admissions made by the defendant.

13. The defendant being dissatisfied with the decree passed by the trial court based on admissions challenged the same before the High Court by filing FAT No. 7 of 2024. The High Court dismissed the FAT holding as under:

"12. According to the said clause, the dependent heir of the original tenant, unless she is the widow of the original tenant, is entitled to carry on as a tenant [coming within the definition of "tenant" as defined in Section 2(g)] to continue in such capacity for a period of 5 years from the demise of the original tenant
13. Hence, although the defendant has not pleaded in the Written statement that he was a dependent of the: original tenant, which should have further cut short his period of tenancy, even proceeding on the premise that the defendant was a dependent, he, being the Son of the original tenant, would be :entitled to sustain his tenancy in such capacity only up to the, expiry of a period- of 5 years from the demise of the original tenant.
14. From the pleadings in the written statement, it is evident that the said period was already over at the time of institution of the suit, since the original tenant, his father Ranjan Ghosh, met his demise on July 13, 2016.
15. It is further admitted in the written statement that the landlord/plaintiff, quite rightly, stopped accepting rent, from the defendant after May, 2021 i.e. after the expiry of the said period

of five years from the death of the original landlord.

16. Hence, the pleadings in the written statement comprise of sufficient ingredients to bring the defendant within the fold of Section 2(g) of the 1997 Act.

17. It may be clarified here that, it is well-settled that law of legal arguments need not be pleaded in the pleadings, either by way of a plaint or a written statement.

18. As such, the defendant need not have specifically pleaded, the applicability of Section 2(g) of the 1997 Act for the purpose of the pleading to acquire the Character of an admission, for the purpose of Order XII Rule 6 of the Code. It would suffice, as in the present case, if the necessary factual ingredients to satisfy Section 2(g) are pleaded in the written statement, for it to be deemed to be an admission that the defendant comes within the purview of Section. 2(g).

19.That is precisely the case here.

20. In the event the defendant comes within Section 2(g) of the 1997 Act, nothing remains to be adjudicated further in the. suit, since the defendant is automatically relegated to the status of a trespasser, and the plaintiff immediately becomes entitled to get a decree for eviction in the absence of any further of independent right having been claimed by the defendant.

21.The defendant, in the written statement, claims entirely through his father, the original tenant. The pleading as to there being a talk of a fresh tenancy being granted in favour of the defendant is neither here nor there since even the said pleading does not tantamount to-establish that a new tenancy has already been created in favour of the defendant, in which case, the outcome of the litigation might have been otherwise.

22. As such, the learned Trial Judge was fully justified in resorting to Section 2(g) of the 1997 Act, read with Order XII Rule 6 of the Code of Civil Procedure, to come to the finding that the plaintiff automatically gets entitled to a decree for eviction by way of a judgment on admission.

23. In such view of the matter, we do not find any justification to interfere with the impugned judgment and decree.

24. Accordingly, FAT 7 of 2024 is dismissed on contest, thereby affirming the judgment and decree dated December 2, 2023 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta, District- Calcutta in Title Suit No. 1068 of 2021.

25. There will be no order as to costs.

26. Keeping in view the pendency of the appeal till now, the defendant/appellant is granted a further period of three months to vacate the premises in favour of the plaintiff/respondent. The pending execution n case shall remain stayed for such period.

27. In the event the defendant/appellant does not vacate the premises within the said period, of three months from this date, the plaintiff/decree holder will be at liberty to proceed with the execution case and the same will be expedited by the executing court.

28. Interim order, if any, stands vacated.

29. A formal decree be drawn up accordingly."

14. In such circumstances referred to above, the defendant is here before this Court with the present petition.

15. We heard Mr. Ramnath Jha, the learned counsel appearing on behalf of the petitioner.

16. Section 2(g) of the 1997 Act reads thus:

"2. Definitions." In this Act, unless there is anything, repugnant in the subject or context,

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes, any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, sort, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family,

and were dependent on him or a person authorised by the tenant who is in possession of such premises but shall not include any person, against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own of occupy any residential premises: Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy, in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose."

17. Thus, the plain reading of Section 2(g) referred to above would indicate that the dependent heir of the original tenant unless she is the widow of the original tenant would be entitled to carry on as a tenant [coming within the definition of "*tenant*" as defined under Section 2(g)] in such capacity for a period of 5 years from the demise of the original tenant.

18. In the case on hand, the defendant is the son of the original tenant. It is not in dispute that he claims his right to continue as a tenant in the suit premises through his father i.e. the original tenant.

19. Order XII Rule 6 of the CPC reads thus:

6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

LEGISLATIVE CHANGES

20. By the Code of Civil Procedure (Amendment) Act, 1976, the following changes had been effected:

(1) Original Rule 6 had been substituted and redrafted into sub-rule (1) and

(2) Sub-rule (2) had been newly inserted,

OBJECT OF AMENDMENTS

21. Rule 6, as originally enacted, enabled a court to pronounce judgment or admission "either in pleading or otherwise". It read thus:

"6. Judgment on admissions.— Any party may, at any stage of a suit. where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

22. The Law Commission considered the provision. With a view to clarify the position as to admission and also to empower the court to pronounce a judgment: *suo motu* and to draw a decree on such judgment, recommended to modify the rule. It stated:

"Where a claim is admitted, a court has jurisdiction under Order XII Rule 6 to enter a judgment for the plaintiff, and to pass a decree on the admitted claim (with liberty to the plaintiff to proceed with the suit in the ordinary way as to the remainder of the claim).

The object of the rule is to enable a party to obtain speedy judgment, at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled.

The rule has been held to be wide enough to cover oral

admissions. The use of the words 'or otherwise' in Rule 6, without the words 'in writing' which are used in Rule 1 of Order XII, shows that a judgment may be given even on an oral admission. It is desirable to codify this interpretation.

It may be noted that under the present rule, a judgment on admission can be passed only on an application. According to a local amendment. the Court may, on the application of any party or of its own motion, make such order or give such judgment. This is a useful amendment, and should be adopted.

In our view, it is also desirable to provide that a decree shall follow or a judgment on admissions." (See: Law Commission's Fifty-fourth Report, p. 145)

23. In Statement of Objects and Reasons, it had been stated:

"Clause 65, sub-clause (ii)- Under Rule 6, where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain speedy judgment at least to the extent of relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule" (See: Notes on Clauses, Gazette of India, dt. 08-04-1974, Pt. II, S.2, Extra., p. 316)

24. Rule 6(1) empowers the court to pronounce a judgment upon admissions made by parties without waiting for the determination of other questions.

25. Rule 6(2) states that a decree shall be drawn up in accordance with the judgment.

26. The primary object underlying Rule 6 is to enable a party to obtain speedy judgment at least to the extent of admission. Where a plaintiff claims a particular relief or reliefs against a defendant and the defendant makes a plain admission, the former is entitled to the relief or reliefs admitted by the latter. [See: Uttam Singh v. United Bank of India, (2000) 7 SCC 120]

27. As observed in the Statement of Objects and Reasons for amending Rule 6, *"where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled."*

28. The provisions of Rule 6 are enabling, discretionary and permissive. They are not mandatory, obligatory or peremptory. This is also clear from the use of the word "may" in the rule.

29. The powers conferred on the court by this rule are untrammeled and cannot be crystallized into any rigid rule of universal application. They can be exercised keeping in view and having regard to the facts and varying circumstances of each case.

30. If the court is of the opinion that it is not safe to pass a judgment on admissions, or that a case involves questions which cannot be appropriately dealt with and decided on the basis of admission, it may, in exercise of its discretion, refuse to pass a judgment and may insist upon clear proof of even admitted facts.

31. To make order or to pronounce judgment on admission is at the discretion of the court. First, the word "may" is used in Rule 6 and not the word "shall" which prima facie shows that the provision is an enabling one. Rule 6 of Order 12 must be read with Rule 5 of Order 8 which is identical to the Proviso to Section 58 of the Evidence Act. Reading all the relevant

provisions together, it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant. (See: Sher Bahadur v. Mohd. Amin, AIR 1929 Lah 569)

32. In the leading decision of **Throp v. Holdsworth, Jessel, reported in (1876)3 Ch D 637 (640)** M.R. said: "This rule enables the plaintiff or the defendant to get rid of so much of the action, as to which there is no controversy."

33. In **Uttam Singh (Supra)** the plaintiff bank filed a suit for recovery of a large sum of money against the defendant. It also filed an application under Order 12, Rule 6 for judgment upon admission in respect of part of claim. The application was allowed and a decree was passed. An appeal against the decree was also dismissed by the High Court. The defendant approached this Court. It was contended before this Court by the defendant that (i) Rule 6 of Order 12 covers only those admissions made in pleadings; (ii) the effect of the admissions can only be considered at the trial of the suit; and (iii) the provision of Order 12, Rule 6 must be read along with the provisions of Order 8 and the court should call upon the plaintiff to prove its case independent of so called admissions.

34. Negativing the contentions and referring to the object of Order 12, Rule 6, the Court observed that *"where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The scope of Rule 6 should not be narrowed down where a party applying for judgment is entitled to succeed on a plain admission of the opposite party. The admission by the defendant was clear, unambiguous,*

unequivocal and unconditional. The courts below were, therefore, right in decreeing the suit of the plaintiff."

35. The words "or otherwise" are wide enough to include all cases of admissions made in the pleadings or *de hors* the pleadings. Under Rule 6, as originally enacted, it was held that the words "or otherwise" without the words "in writing" used in Rule 1 showed that a judgment could be given upon oral or verbal admission also. [See: Beeny, re, (1894) 1 Ch D 499] The Amendment Act of 1976, however, made the position clear stating that such admissions may be "in the pleading or otherwise" and "whether orally or in writing". Thus, after the amendment in Rule 6, the admissions are not confined to Rule 1 or Rule 4 of Order 6, but are of general application. Such admissions may be express or implied (constructive); may be in writing or oral; or may be before the institution of the suit, after the suit is brought or during the pendency of proceedings.

36. A Division Bench of the Delhi High Court very correctly laid down the following interpretation of the provision of O. 12, R. 6, CPC, in the decision of ITDC Limited v. Chander Pal Sood and Son, reported in (2000) 84 DLT 337 (DB): (2000 AIHC 1990):

> *"Order 12, R. 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing."*

37. The use of the expression 'otherwise' in the aforesaid context came to be interpreted by the High Court. Considering the expression the Court interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also dehors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties' statement is recorded under O. 10, Rr. 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein.

38. Rule 6 of Order XII, before the amendment, allowed judgment on admission only on an application by a party. The Law Commission, however, suggested that a judgment may be pronounced either on an application by a party or even *suo motu* [See: Throp (supra)]

39. This rule authorizes the court to enter a judgment where a claim is admitted and to pass a decree on such admitted claim. This can be done at any stage. [See: Uttam Singh (supra)]. Thus, a plaintiff may move for judgment upon admission by the defendant in his written statement at any stage of the suit although he has joined issue on the defence." [See: Brown v. Pearson, (1882) 21 Ch D 716]. Likewise, a defendant may apply for dismissal of the suit on the basis of admission by the plaintiff in rejoinder.

40. The court may, in an appropriate case, give a judgment at an interlocutory stage of the proceedings on admission by a party. [See: Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396]. But if the case involves questions which cannot conveniently be disposed of at a motion stage, the court may not give judgment at that stage. [See: Simla Wholesale Mart (Supra)]

41. Sub-rule (2) of Rule 6 as inserted by the Code of Civil Procedure (Amendment) Act, 1976 requires the court to draw up a decree in accordance with the judgment on admission. Sub-rule (2) is thus consequential and logical sequence to sub-rule (1).

42. Since the object of sub-rule (1) is to enable the plaintiff to get judgment on admission of the defendant to the extent of such admission, he must get the benefit thereof immediately without waiting for the determination of "non-admitted claim". Sub-rule (2) makes it imperative for the court to draw up a decree in terms of judgment on admission which can be executed by the plaintiff." [See: Uttam Singh (supra)]. In such cases, there may be two decrees; (i) in respect of admitted claim; and (ii) in respect of "non-admitted" or contested claim. [See: Bai Chanchal v. United Bank of India, AIR 1971 SC 1081].

43. A decree under Rule 6 may be either preliminary or final. [See: Sivalinga v. Narayani, AIR 1946 Mad 151]

44. We are of the view having regard to the clear and unequivocal admission made by the defendant in his written statement, the High Court committed

no error much less any error of law in decreeing the suit applying Order XII Rule 6 of the CPC.

45. At this stage we should take note of the submission canvassed by the learned counsel that the petitioner is not governed by the provisions of the West Bengal Premises Tenancy Act, 1997 and therefore the entire discussion as regards Section 2(g) of the Act, 1997 was unnecessary. In other words, the attempt on the part of the learned counsel is to persuade us to accept the argument that if Section 2(g) of the Act, 1997 is not applicable then in such circumstances the petitioner has a right to continue in occupation of the premises in question as the legal heir of the original tenant.

46. We are afraid, we are not impressed with the submission canvassed by the learned counsel as noted above. We take notice of the fact that this point was never raised or argued before the High Court. We wonder if it was at all argued even before the trial-court. We called upon the learned counsel to point out from the reply filed by the petitioner to the application filed by the respondent under Order XII Rule 6 of the CPC that this point was raised before the High Court. There is nothing in the objections/reply of the petitioner to indicate that such contention was ever raised. On the contrary, para 9 of the reply filed by the petitioner-herein which we have incorporated in para 11 of this order clinches the issue. In para 9 of the reply to the application filed by the plaintiff under Order XII Rule 6 of the CPC it is stated thus:-

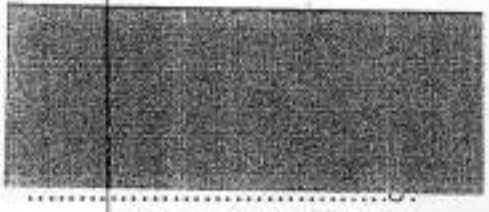
> *"Moreover, the defendant filed an application u/s 7(1) & 7(2) of the W.B.P.T. Act before this Ld. Court for payment of*

current rent as well as arrears rent if any due and payable and those applications are pending before this Ld. Court."

If according to the petitioner the provisions of the Act, 1997 are not applicable then what was the good reason for him to file the application under Sections 7(1) & (2) of the Act, 1997 respectively.

47. In view of the aforesaid, this petition fails and is hereby dismissed.

48. Registry shall circulate one copy each of this order to all the High Courts and the High Courts in turn shall circulate the order in their respective District judiciary.



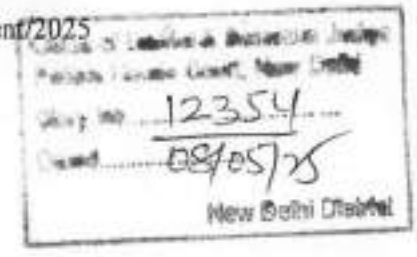
(J.B. PARDIWALA)

(R. MAHADEVAN)

New Delhi
07.04.2025

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 2557-2569 /DHC/Gaz.IB/G-2/SC-Judgment/2025 Dated: 07 May 2025.



From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.

To,

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
3. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
4. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi.
5. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
6. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
7. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
8. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
9. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
10. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
11. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub: Judgment dated 16.04.2025 passed by Hon'ble Supreme Court of India in Civil Appeal nos. 5200 of 2025 [Arising out of SLP(C) nos. 13679 of 2022] titled "The Correspondence RBANMS Educational Institution vs. B. Gunashekar & Another"

Sir/ Madam,

I am directed to forward herewith a copy of Judgment dated 16.04.2025 passed by Hon'ble Supreme Court of India in Civil Appeal nos. 5200 of 2025 [Arising out of SLP(C) nos. 13679 of 2022] titled "The Correspondence RBANMS Educational Institution vs. B. Gunashekar & Another", with the request to circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Ld. OIC/ GEN.
08/05/2025

PD & SI/NDD
08/05/2025

Yours faithfully,

(Vinay Sharma)
Deputy Registrar (Gazette-IB)
For Registrar General.

Encl: As above.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5200 OF 2025
(Arising from SLP (C) No. 13679 of 2022)

The Correspondence,
RBANMS Educational Institution ... Appellant

VERSUS

B. Gunashekar & Another ...Respondents

JUDGMENT

R. MAHADEVAN, J.

Leave granted.

2. The present appeal challenges the order dated 02.06.2022 passed by the High Court of Karnataka at Bengaluru[1] in Civil Revision Petition No.130 of 2021, whereby the High Court dismissed the revision petition filed by the appellant against the order of the trial Court dated 11.06.2021 rejecting their application filed under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908[2] for rejection of the plaint.

[1] Hereinafter referred to as "the High Court"
[2] For short, "CPC"

3. On 12.08.2024, when the matter was taken up for consideration, this Court has passed the following order:

> *"Issue notice, returnable in six weeks.*
> *There will be stay of the operation of proceedings in OS No.25968 of 2018 pending before the Court of XIII Addl. City Civil & Sessions Judge, MayoHall Unit, Bengaluru (CCH-22) till the next date of hearing."*

3.1. On 22.11.2024, the aforesaid interim order was extended by this Court and is in force till date.

BRIEF FACTS

4. The appellant *viz.*, R.B.A.N.M.S. Educational Institution, was established in the year 1873 as a public charitable trust, dedicated to serving first-generation learners from marginalized communities in urban Bangalore. In 1905, a significant parcel of land, then known as 'the Sappers Practice Ground,' was leased to the appellant. Subsequently, in 1929, this property was formally conveyed to the appellant by the Municipal Commissioner of Civil and Military Station of Bangalore. Since then, the appellant has been in continuous possession of the said property, utilizing it for various educational purposes including Pre-University Colleges, first-grade degree colleges, and sporting facilities serving both their institutions and the youth of Bangalore.

5. The respondents filed a suit bearing O.S.No.25968 of 2018 against the appellant, before the City Civil Court and Sessions Judge at Bangalore, seeking permanent injunction restraining the appellant from creating any third-party

interest over the suit schedule property, based on an alleged agreement to sell executed by the respondents and Ramesh S. Reddy with one Maheshwari Ranganathan and others, in respect of the suit schedule property, on 10th April, 2018 for a sale consideration of Rs.9,00,00,000/-, for which, they claim to have paid Rs.75,00,000/- as an advance payment. It was alleged in the plaint that the appellant was trying to manipulate the title deeds of the suit schedule property with an intention to alienate or dispose of the same to third parties.

6. After service of summons, the appellant filed an application bearing I.A. No. 3 of 2018 under Order VII Rule 11(a) and (d) CPC, seeking rejection of the plaint, *inter alia* stating that the respondents are only agreement holders and not owners of the suit schedule property and that, mere execution of an agreement to sell does not create or confer any right or interest in the property in favour of the proposed purchasers.

7. The respondents filed their objections to the aforesaid application filed by the appellant.

8. Upon hearing both sides, the trial Court rejected the aforesaid application seeking rejection of the plaint on 03.06.2020. Challenging the same, the appellant preferred C.R.P. No. 205 of 2020, which was allowed in part, by the High Court *vide* order dated 19.11.2020. The operative portion of the order reads as under:

> *"The petition is allowed in part. The impugned order dated 3.6.2020 in O.S.No.25968/2018 on the XIII Additional City Civil and Sessions Judge, Mayohall*

Unit, Bengaluru is set aside. The petitioner's application filed under Order VII Rule 11(a) and (d) of Code of Civil Procedure is restored for reconsideration calling upon the Civil Court to decide on merits of the application in accordance with law in the light of the grounds urged in an expedited manner but within an outer limit of three months from the date of first hearing after this order."

9. Pursuant to the aforesaid order, the trial Court reconsidered the application filed under Order VII Rule 11(a) and (d) CPC and ultimately, rejected the same, on 11.06.2021. Aggrieved by the same, the appellant preferred Civil Revision Petition No. 130 of 2021 before the High Court and the same also ended in dismissal by the order impugned herein. Therefore, the appellant is before us with the present appeal.

CONTENTIONS OF THE PARTIES

10. The learned counsel appearing for the appellant submitted that the alleged agreement to sell, which forms the fundamental basis of the suit, cannot create any interest in the suit schedule property as per Section 54 of the Transfer of Property Act, 1882. In this regard, the learned counsel relied on the judgment in *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotre Dead through LRs. & Anr.* [1], wherein, this Court held that a mere agreement to sell does not create any interest in the property. This position was further reinforced in the judgment in *Suraj Lamp & Industries (P) Ltd. v. State of Haryana & Another*[2], which reiterated that a contract for sale merely confers a limited right under

[1] (2004) 8 SCC 614
[2] (2012) 1 SCC 656

Section 53-A of the Transfer of Property Act, 1882. The learned counsel also highlighted the practical application of this principle in *K. Basavarajappa v. Tax Recovery Commissioner, Bangalore & Others*[5], in which, it was held by this Court that a proposed vendee with an agreement to sell lacks *locus standi* to challenge third-party rights.

10.1. The learned counsel emphasized the suspicious circumstances surrounding the alleged agreement to sell i.e., the purported vendors have not been made parties to the suit, their addresses were conspicuously absent in the plaint, and the entire advance payment of Rs.75 lakhs was claimed to have been made in cash without any documentary proof. Additionally, the learned counsel invited our attention to the respondents' pattern of filing similar suits in respect of the other valuable properties in Bangalore, suggesting a systematic attempt at land grabbing through dubious agreements to sell.

10.2. The learned counsel further pointed out impropriety of maintaining a pure injunction suit where title itself is in dispute. Citing the decision of this court in *Jharkhand State Housing Board v. Didar Singh & Another*[6], the learned counsel contended that when there is a cloud over title, a suit merely for injunction without seeking declaration of title is not maintainable. Referring to the decision in *Premji Ratansey Shah & Others v. Union of India & Others*[7], the learned

[5] (1996) 11 SCC 632
[6] (2019) 17 SCC 692
[7] (1994) 5 SCC 547

counsel contended that Section 41(h) and (j) of the Specific Relief Act, 1963, bars grant of injunction when equally efficacious relief is available through other means and when the plaintiffs have no personal interest in the property. Ultimately, the learned counsel submitted that applying the ratio laid down in the decision in *T. Arivandandam v. T.V. Satyapal & Another*[8] to the facts of the present case, the plaint is barred by law and does not disclose a right to sue against the appellant herein on the basis of an agreement to sell executed by the respondents, with third parties.

10.3. With these submissions and case laws, the learned counsel prayed that this appeal will have to be allowed and the suit filed by the respondents deserves to be rejected under Order VII Rule 11 CPC.

11. Per contra, the learned counsel appearing for the respondents would submit that at the stage of considering an application under Order VII Rule 11 CPC, the court must confine itself to the averments in the plaint without examining the defense or other external materials. Placing reliance on the decisions in *P.V. Guru Raj Reddy v. P. Neeradha Reddy & Others*[9] and *Soumitra Kumar Sen v. Shyamal Kumar Sen & Others*[10], the learned counsel proceeded to argue that the plaint's

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[8] (1977) 4 SCC 467
[9] (2015) 8 SCC 331
[10] (2018) 5 SCC 644

averments must be accepted as true at this stage, and the defendant's objections are immaterial.

11.1. According to the learned counsel, the suit was filed to protect the respondents' legitimate interests over the property in question under the agreement to sell, apprehending alienation of the property by third parties. Further, the learned counsel distinguished the decisions cited by the appellant, particularly that in *Rambhau Namdeo Gajre (supra)* and contended that it was decided after full trial and examination of evidence, unlike the present case where the cause of action stems from the agreement itself. The learned counsel also sought to differentiate the decision in *T. Arivandandam (supra)* noting that unlike that case which involved vexatious litigation following lost eviction proceedings, the present matter involved genuine rights under a registered agreement to sell. The learned counsel further submitted that rejection of plaint is a drastic remedy that should be exercised sparingly, only when the plaint is manifestly vexatious and meritless; and that, the proper course would be for the appellant to file a written statement and contest the suit on merits, rather than seeking rejection of the plaint at the threshold.

11.2. It is further submitted that both the Courts below have examined the plaint in the light of Order VII Rule 11 (a) CPC to ascertain that it does indeed make out a valid cause of action, i.e., that the Respondents have acquired an interest in the property by virtue of the agreement to sell dated 10.04.2018 and hence, if the

claim of the appellant is that they hold a valid title to the property, it is for them to prove the same during trial.

11.3. The learned counsel also submitted that the appellant is misguided in asserting that the provisions of Section 53-A of the Transfer of Property Act, 1882 act as a bar against parties or interlopers who are not party to the transaction envisaged in that section. That apart, the decision in *K. Basavarajappa (supra)* does not apply to the facts of the present case, for that the same was about whether an agreement to sell will stand in the way of the property being sold under auction for tax recovery purposes and the same cannot and should not be used as a device to defeat the suit at the threshold.

11.4. Therefore, according to the learned counsel, the impugned order of the High Court does not require any interference at the hands of this court.

DISCUSSION AND FINDINGS

12. We have heard the learned counsel appearing for both sides and perused the materials available record.

13. Seemingly, the appellant institution's journey began nearly 150 years ago, and its possession of the disputed property dates back to 1905, when it was initially leased and subsequently conveyed by the Commissioner of Civil and Military Station of Bangalore. The present dispute arose when the respondents

filed a suit in O.S. No. 25968 of 2018 seeking permanent injunction against the appellant. The respondents' claim rests entirely on an agreement to sell dated 10.04.2018, purportedly executed by certain individuals who, notably, are not parties to the suit. The appellant, confronted with this litigation, filed an application under Order VII Rule 11(a) and (d) CPC seeking rejection of the plaint. Both the trial court and the High Court rejected the said application filed by the appellant. Hence, this appeal came to be filed by the appellant before us.

14. Let us first examine the scope and purpose of Order VII Rule 11 CPC[1]. This Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives*[2], explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

> *"23.1* ...

[1] "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 in 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 prevent 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."

[2] (2020) 7 SCC 366 : 2020 SCC OnLine SC 562

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi[13] 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 : (SCC p.324, para 12)

> *"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 in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."*

23.5. 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.

23.6. 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[14] read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

> *"14.Production of document on which plaintiff sues or relies. (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall,*

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[13] 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823

[14] Liverpool & London S.P. & I Assn. Ltd. V. M.V. Sea Success I, (2004) 9 SCC 512

at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

(emphasis supplied)

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration[13].

23.11. The test for exercising the power under Order VII 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 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."

[13] Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137

23.12. In Hardesh Ores (P.) Ltd. v. Hede & Co.[16] 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[17].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra[18]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In Swamy Atmanand v. Sri Ramakrishna Tapovanam[19] this Court held,

> *"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded"*
>
> *(emphasis supplied)*

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[16] (2007) 5 SCC 614
[17] (1999) 3 SCC 267
[18] (2003) 1 SCC 557
[19] (2005) 10 SCC 51

24.2. In T. Arivandandam v. T.V. Satyapal[20] this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

> *"5. ...The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..."*
>
> *(emphasis supplied)*

24.3. Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal[21] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal[22] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

.....

28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh[23] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

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[20] (1977) 4 SCC 467
[21] (1998) 2 SCC 179
[22] (2017) 13 SCC 174
[23] (1991) 4 SCC 1 : 1991 SCC (L&S) 1082

14.1. Thus, it is clear that the above provision *viz.*, Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava v. Union of India &*

Another[24], this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal. This is where the substantive laws like Specific Relief Act, 1963, Contract Act, 1872, and Transfer of Property Act, 1882, come into operation. A pure question of law that can be decided at the early stage of litigation, ought to be decided at the earliest stage. In the present case, the respondents' claim based on an agreement to sell. The legal effect of such an agreement must be examined in light of Section 54 of the Transfer of Property Act, 1882, which explicitly states that a contract for the sale of immovable property does not, of itself, create any

[24] (2006) 6 SCC 207

interest in or charge on such property. This principle has been consistently upheld by this Court in the following judgments:

(i) *Rambhau Namdeo Gajre (supra)*

> *"13. The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs 100 can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is of the value of more than Rs 100. Therefore, unless there was a registered document of sale in favour of Pishorrilal (the proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhoira (original plaintiff) and remain in his ownership. This point was examined in detail by this Court in State of U.P. v. District Judge [(1997) 1 SCC 496] and it was held thus : (SCC pp. 499-500, para 7)*
>
> > *"7. Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an agreement to sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered sale deed. It is not in dispute that the lands sought to be covered were having value of more than Rs 100. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement-holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect. However, strong reliance was placed by learned counsel for Respondent 3 on Section 53-A of the Transfer of Property Act. We fail to appreciate how that section can at all be relevant against the third party like the appellant State. That section provides for a shield of protection to the proposed transferee to remain in possession against the original owner who has agreed to sell these lands to the transferee if the proposed*

transferee satisfies other conditions of Section 53-A. That protection is available as a shield only against the transferor, the proposed vendor, and would disentitle him from disturbing the possession of the proposed transferees who are put in possession pursuant to such an agreement. But that has nothing to do with the ownership of the proposed transferor who remains full owner of the said lands till they are legally conveyed by sale deed to the proposed transferees. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party like the appellant State when it seeks to enforce the provisions of the Act against the tenure-holder, proposed transferor of these lands."

(emphasis supplied)

There was no agreement between the appellant and the respondent in connection with the suit land. The doctrine of part-performance could have been availed of by Pishorrilal against his proposed vendor subject, of course, to the fulfilment of the conditions mentioned above. It could not be availed of by the appellant against the respondent with whom he has no privity of contract. The appellant has been put in possession of the suit land on the basis of an agreement of sale not by the respondent but by Pishorrilal, therefore, the privity of contract is between Pishorrilal and the appellant and not between the appellant and the respondent. The doctrine of part-performance as contemplated in Section 53-A can be availed of by the proposed transferee against his transferor or any person claiming under him and not against a third person with whom he does not have a privity of contract."

(ii) *Suraj Lamp & Industries (P) Ltd. v. State of Haryana & Another*[25], wherein, this Court comprehensively examined the nature of rights created by an agreement to sell and concluded that such agreements create, at best, a personal right enforceable against the vendor. The relevant paragraphs read as under:

"16. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr. (1977) 3 SCC 247, observed: (SCC pp.254-55, paras 32-33 & 37)

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the

[25] (2012) 1 SCC 656

Transfer of Property Act. See Ramburan Prasad v. Ram Mohit Hazra [1967] 1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of Transfer of Property Act is used in the wider sense of conveying ownership...

37....that only on execution of conveyance, ownership passes from one party to another...."

17. In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotre [2004 (8) SCC 614] this Court held:

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). Accordingly to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

(iii) *Cosmos Co. Operative Bank Ltd v. Central Bank of India & Ors*[26]

"25. The observations made by this Court in Suraj Lamp (supra) in paras 16 and 19 are also relevant,

....

26. Suraj Lamp (supra) later came to be referred to and relied upon by this Court in Shakeel Ahmed v. Syed Akhlaq Hussain, 2023 SCC OnLine SC 1526 wherein the Court after referring to its earlier judgment held that the person relying upon the customary documents cannot claim to be the owner of the immovable property and consequently not maintain any claims against a third-party. The relevant paras read as under:—

"10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:
(i). Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar (2018) 7 SCC 639
(ii). Balram Singh v. Kelo Devi Civil Appeal No. 6733 of 2022
(iii). Paul Rubber Industries Private Limited v. Amit Chand Mitra, SLP(C) No. 15774 of 2022.

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

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[26] 2025 SCC OnLine SC 352

13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view."

15.1. Undoubtedly, a sale deed, which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest. Section 53-A of the Transfer of Property Act, 1882 offers protection only to a proposed transferee who has part performed his part of the promise and has been put into possession, against the actions of transferor, acting against the interest of the transferee. For the proposed transferee to seek any protection against the transferor, he must have either performed his part of obligation in full or in part. The applicability of Section 53-A of the Transfer of Property Act, 1882 is subject to certain conditions viz., (a) the agreement must be in writing with the owner of the property or in other words, the transferor must be either the owner or his aut

horised representative, (b) the transferee must have been put into possession or must have acted in furtherance of the agreement and made some developments, (c) the protection under Section 53-A is not an exemption to Section 52 of the Transfer of Property Act, 1882 or in other words, a transferee, put into possession with the knowledge of a pending *lis*, is not entitled to any protection, (d) the transferee must be in possession when the *lis* is initiated against his transferor and must be willing to perform the remaining part of his obligation, (e) the transferee must be entitled to seek specific performance or in other words, must not be barred by any of the provisions of the Specific Relief Act, 1963 from seeking such performance. The protection under Section 53-A is not available against a third party who may have an adversarial claim against the vendor. Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in possession. In such cases, the vendor will have to approach the court and not the proposed transferee.

15.2. In the present case, juxtaposing the above legal principles to the facts of the case, we find that the respondents' claim suffers from multiple fatal defects that go to the root of the case, which are as follows:

15.2.1. First, there is no privity between the respondents and the appellant. The agreement to sell, is not between the parties to the suit. According to Section 7 of the Transfer of Property Act, 1882, only the owner, or any person authorised by him, can transfer the property. We have already held that an agreement to sell does not confer any right on the proposed purchaser under the agreement. Therefore, as a natural corollary, any right, until the sale deed is executed, will vest only with the owner, or in other words, the vendor to take necessary action to protect his interest in the property. According to the respondents, the property belongs to the vendors and according to the appellant, the property vests in them. Since the respondents are not divested any right by virtue of the agreement, they cannot sustain the suit as they would not have any locus. Consequently, they also cannot seek any declaration in respect of the title of the vendors. But when the title is under a cloud, it is necessary that a declaration be sought as laid down by this Court in the judgment in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and others*[27]. Therefore, the suit at the instance of the respondents/plaintiffs is not maintainable and only the vendors could have approached the court for a relief of declaration. In the present case, strangely, the vendors are not arrayed as parties to even support any semblance of right sought by the respondents/plaintiffs, which we found not to be in existence. Further, the respondents/plaintiffs claim to have paid the entire consideration of

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[27] AIR 2008 SC 2033 : MANU/SC/7376/2008

Rs.75,00,000/- in cash, despite the introduction of Section 269ST to the Income Tax Act in 2017 and the corresponding amendment to Section 271 DA. As held by us, the agreement can only create rights against the proposed vendors and not against third parties like the appellant herein. As the agreement to sell does not create any transferable interest or title in the property in favour of the respondents/ plaintiffs, as per Section 54 of the Transfer of Property Act, 1882, we hold that the attempt of the plaintiffs to disclose the cause of action through clever drafting, based solely on an agreement to sell, must fail, as such disclosure cannot be restricted to mere statement of facts but must disclose a legal right to sue.

15.2.2. Secondly, and perhaps more fundamentally, as we have seen and held above, the respondents have no legal right that can be enforced against the appellant as their claim is impliedly barred by virtue of Section 54 of the Transfer of Property Act, 1882. Their remedy, if any, lies against their proposed vendors. The plaint averments remain silent regarding the execution of a registered sale deed in favour of the respondents, which alone can confer a valid right on them to file a suit against the appellant as held by us earlier. Another, remedy available to them is to institute a suit against the vendors for specific performance. This principle was clearly established in *K. Basavarajappa (supra)*, wherein this Court held that an agreement holder lacks *locus standi* to maintain actions against third parties. The relevant paragraph of the said judgment is extracted below:

'8. ... By mere agreement to sell the appellant got no interest in the property put to auction to enable him to apply for setting aside such auction under Rule 60 and especially when his transaction was hit by Rule 16(1) read with Rules 51 and 48. Consequently he could not be said to be having any legal interest to entitle him to move such an application. Consequently no fault could be found with the decision of the Division Bench of the High Court rejecting the entitlement of the appellant to move such an application."

15.2.3. The contention of the learned counsel for the respondents that the judgements relied upon by the appellant are not applicable, cannot be accepted for the simple reason that the ratio laid down by this court, is applicable irrespective of the stage at which it is relied upon. What is relevant is the ratio and not the stage. Such contentions go against the spirit of Article 141 of the Constitution of India. Once a ratio is laid down, the courts have to apply the ratio, considering the facts of the case and once, found to be applicable, irrespective of the stage, the same has to be applied, to throw out frivolous suits. There is no gainsaying in contending that the other party must be put to undergo the ordeal of entire trial, when the plaintiff's claim is either barred by law or the plaint fails to disclose a cause of action, as it would amount to abuse of process of law, wasting the precious time of the courts. On the other hand, the judgments relied upon by the respondents do not come into their aid as the judgments referred to by them also lay down the proposition that the plaint can be rejected if on a meaningful reading of it, fails to disclose a cause of action or is barred by law. In the present case, from the facts, we also find this to be a case of champertous litigation, between the plaintiffs and the vendors, who are not parties to the suit. Though

champertous litigations have been recognized in our country to some extent by way of amendment to CPC by certain states, considering the facts of the present case and the averments in the plaint, we only find the litigation to be inequitable, unconscionable or extortionate.

15.2.4. Further, the respondents are not in possession of the property. Whereas, the appellant's possession since 1905 is admitted in the plaint itself. In such circumstances, where the plaintiffs are not in possession and the defendant is in settled possession for over a century, a suit for bare injunction by a proposed transferee is clearly not maintainable. Section 41(j) of the Specific Relief Act, 1963 prohibits grant of injunction when the plaintiff has no personal interest in the matter. In the present case, the respondents, being mere agreement holders, have no personal interest in the suit schedule property that can be enforced against third parties. The "personal interest" is to be understood in the context of a legally enforceable right, as when there is a bar in law, the mere existence of an interest in the outcome cannot give a right to sue. As held by us above, no declaratory relief has been sought as contemplated under Section 34 of the Specific Relief Act, 1963. This principle was clearly established in *Jharkhand State Housing Board (supra)*, in which, this Court emphasized that where title is in dispute, a mere suit for injunction is not maintainable. The relevant portion of the said judgment is reproduced hereunder:-

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

15.2.5. Yet another defect in the plaint is regarding the identity of the property. The respondents/plaintiffs, as seen above, have admitted to the possession of the appellant over the suit property. The plaint, on one hand, raises a dispute as to whether the property claimed by the respondents is the same as that possessed by the appellant, and on the other hand, seeks only a relief of permanent injunction restraining the appellant/defendant from alienating the property, without seeking a declaration affirming the title of their vendors. The entitlement of the plaintiffs to the possession rests on the title of their vendors and it is not an independent right. Without possession and without seeking a declaration of title, not only is the suit barred but the cause of action is also fictitious.

16. The High Court without noticing the above defects in the plaint, dismissed the application filed by the appellant under Order VII Rule 11 CPC by observing that the cause of action is a mixed question of fact and law and that the matter requires trial. When the defects go to the root of the case, barred by law with fictitious allegations and are incurable, no amount of evidence can salvage the

plaintiffs' case. Though an agreement to sell creates certain rights, these rights are purely personal between the parties to the agreement and can only be enforced against the vendors or, in limited circumstances, under Section 53A of the Transfer of Property Act, 1882, against a subsequent transferee with notice, as held by us above. They cannot be enforced against third parties who claim independent title and possession. Therefore, the High Court's observation that an agreement to sell creates an "enforceable right" cannot be countenanced by us.

17. At the same time, we are conscious of principle that only averments in the plaint are to be considered under Order VII Rule 11 CPC. While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In *T. Arivandandam (supra),* this Court emphasized that where the plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous. The present case falls squarely within this principle.

18. In the instant case, admittedly, no sale was originally effected and only part consideration was made, which was not even to the appellant, but rather to a third party. Upon discovering that the property did not belong to the third party, the respondents instituted a suit. It must be noted that the appellant has been in

possession of the suit schedule property for several decades. Given these circumstances, the trial court must have adopted a fair and balanced approach, carefully weighing all relevant factors, considered the provisions of the Transfer of Property Act, 1882 and the Specific Relief Act, 1963, but it did not do so. The decision of the trial Court was also affirmed by the High Court. However, we have to take into consideration that the respondents are in the habit of filing similar suits in respect of other valuable properties in Bangalore, based on various alleged agreements to sell, which do not confer any right to sue. On the other hand, the appellant is a 148-year-old charitable trust serving marginalized communities. The public interest implications of this case are significant consideration. Such institutions must be protected from speculative litigation that can drain their resources and impede their charitable work. Moreover, allowing suits like the present one to proceed to trial, would not only waste judicial time and resources, but also encourage similar speculative and extortionate litigations. Hence, this is a fit case for the imposition of costs on the respondents under Section 35A of the Civil Procedure Code, 1908. However, we refrain from doing so at this stage. At the same time, the respondents are hereby cautioned that any future misuse of the judicial process lacking in bonafides may invite strict action including imposition of exemplary costs.

18.1. Further, through the averments made in the plaint and in the agreement, the respondents/plaintiffs have claimed to have paid huge sum towards consideration

by cash. It is pertinent to recall that Section 269ST of the Income Tax Act, was introduced to curb black money by digitalising the transactions above Rs.2,00,000/- and contemplating equal amount of penalty under Section 271DA of the Act. As per the said provisions, action is to be taken on the recipient. However, there is also an onus on the plaintiffs to disclose their source for such huge cash. The Central Government thought it fit to cap the cash transactions and move forwards towards digital economy to curb the dark economy which has a drastic effect on the economy of the country. It will be useful to refer to the Budget Speech during the introduction of the Finance Bill, 2017 and the extract of the memo presented with the Finance Bill, 2017, which lay down the object:

Budget Speech:
"VII. DIGITAL ECONOMY

.....113. Promotion of a digital economy is an integral part of Government's strategy to clean the system and weed out corruption and black money. It has a transformative impact in terms of greater formalisation of the economy and mainstreaming of financial savings into the banking system. This, in turn, is expected to energise private investment in the country through lower cost of credit. India is now on the cusp of a massive digital revolution.

.....

Promoting Digital Economy
162. The Special Investigation Team (SIT) set up by the Government for black money has suggested that no transaction above Rs.3 lakh should be permitted in cash. The Government has decided to accept this proposal. Suitable amendment to the Income-tax Act is proposed in the Finance Bill for enforcing this decision."

Extract from Memo of Finance Bill, 2017

"Restriction on cash transactions
In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating are source crunch for its various welfare programmes. Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash.

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST in the Act to provide that no person shall receive an amount of three lakh rupees or more,
(a) in aggregate from a person in a day;
(b) in respect of a single transaction; or
(c) in respect of transactions relating to one event or occasion from a person,
otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

It is further proposed to provide that the said restriction shall not apply to Government, any banking company, post office, savings bank or co-operative bank. Further, it is proposed that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply. Transactions of the nature referred to in section 269SS are proposed to be excluded from the scope of the said section.

It is also proposed to insert new section 271DA in the Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of the proposed section 269ST. The penalty is proposed to be a sum equal to the amount of such receipt. The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention. It is also proposed that any such penalty shall be levied by the Joint Commissioner.
It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of one per cent. of sale consideration on cash sale of jewellery exceeding five lakh rupees.

These amendments will take effect from 1st April 2017."

However, when the Bill was passed, the permissible limit was capped under Rupees Two Lakhs, instead of the proposed Rupees Three Lakhs. When a suit is filed claiming Rs.75,00,000/- paid by cash, not only does is create a suspicion on the transaction, but also displays, a violation of law. Though the amendment has come into effect from 01.04.2017, we find from the present litigation that the same has not brought the desired change. When there is a law in place, the same

has to be enforced. Most times, such transactions go unnoticed or not brought to the knowledge of the income tax authorities. It is settled position that ignorance in fact is excusable but not the ignorance in law. Therefore, we deem it necessary to issue the following directions:

(A) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,

(B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,

(C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,

(D) Whenever, it comes to the knowledge of any Income Tax Authority that a sum of Rs. 2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the Chief Secretary of the State/UT

for initiating appropriate disciplinary action against such officer who failed to intimate the transactions.

19. In light of the above discussion, we are of the firm view that the plaint ought to have been rejected under Order VII Rule 11(a) and (d) CPC. Hence, the orders passed by the High Court as well as the trial Court rejecting the application filed by the appellant, cannot be sustained in law and deserve to be set aside.

CONCLUSION

20. In fine,

(i) This appeal is allowed.

(ii) The impugned judgment of the High Court dated 02.06.2022 and the order of the trial Court dated 11.06.2021 are set aside.

(iii) As a sequel, the application filed under Order VII Rule 11(a) and (d) CPC is allowed.

(iv) The plaint in O.S. No. 25968 of 2018 pending on the file of XIII Additional City Civil and Sessions Judge, Mayohall Unit, Bengaluru, is rejected.

(v) The directions given by us in paragraph 18.1 of this judgment shall be intimated by the Registrars of the High Courts, the Chief Secretaries of the States/Union Territories and the Principal Chief Commissioner of Income

Tax Department to the District Judiciary, the officials of the registration department and the jurisdictional officers under the Income Tax Department respectively, so as to facilitate the conduct of periodical audit.

(vi) The parties shall bear their respective costs throughout the proceedings.

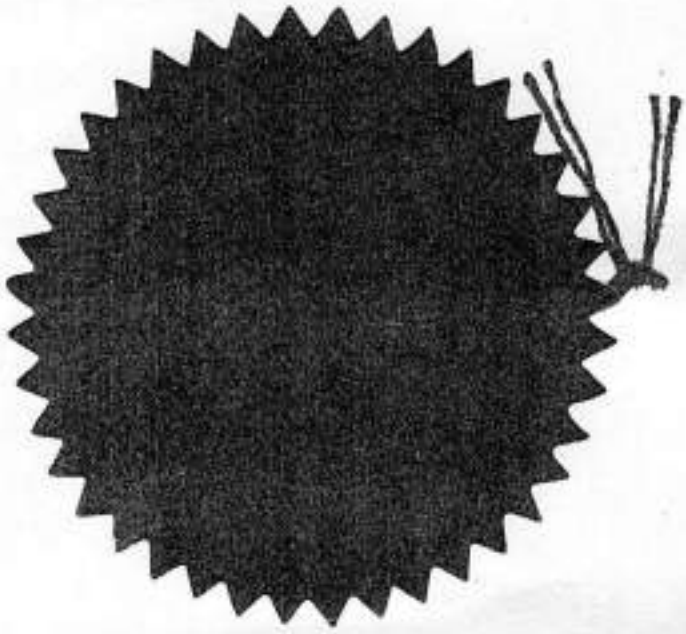
(vii) Miscellaneous Application(s), if any, shall stand disposed of.

21. The Registrar (Judicial) is directed to circulate a copy of this Judgment to the Registrar General of all the High Courts, the Chief Secretaries of all the States / Union Territories, and the Principal Chief Commissioner of Income Tax Department, enabling them to communicate the directions issued by this Court for strict compliance.

sd/-
.....J.
[J.B. Pardiwala]

sd/-
.....J.
[R. Mahadevan]

NEW DELHI;
APRIL 16, 2025.



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