

(1997) 03 DEL CK 0093

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 227 of 1996

IITD Co-operative Group Housing Society Ltd.

APPELLANT

Vs

Sirtej Bahadur Gupta

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 2, Order 9 Rule 7

Citation : (1997) 2 AD 853 : (1997) 1 ARBLR 663 : (1997) 67 DLT 650 : (1997) 41 DRJ 259

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Sirtej Bahadur Gupta has filed a suit for mandatory injunction against M/s. 1.I.T.D. Co-operative Group Housing Society Ltd. As per him the defendant Society had entered into a contract with one M/s. Bharat Construction Corporation for construction of its Building Complex and the said Corporation, in turn, had appointed him as sub-contractor for doing electrical job. His grievance is that although he has completed the job, his electrical goods and tools etc. worth Rs.1,45,000.00 which are lying in a store, are not being allowed by the Society to be removed. Hence his suit for mandatory injunction directing the defendant Society to allow him to lift his goods and tools.

(2) In response to the summons issued in the suit, the defendant Society put in appearance and moved an application under Order 7 rule Ii of the CPC praying for rejection of the plaint on the following grounds: (a) The suit was barred under sections 39 and 41 of the Specific Relief Act; (b) There was no privity of contract between the plaintiff and the defendant; (c) the plaint did not disclose any cause of action against the defendant. (d) The suit was beyond the pecuniary jurisdiction of the court (e) The defendant was entitled to take possession of the tools etc. in question; (f) In terms of the main contract, a sub-

contractor could not be appointed.

(3) On the said application, the learned Civil Judge passed the following order:
"There is an appl. u/o 9 R. 7 (sic.) CPC . to which reply has been filed.

(4) For the purposes of adjudication of the controversy, I deem it appropriate to direct the defendant to file an affidavit to the following effect:- 1. Whether the plaintiff carried out any contract job or electrification work for the defdt. society. 2. Whether the goods/articles/tools as specified in the plaint are lying at the site of the society. Defendant is further directed to file a written contract entered with the main contractor. The appl. u/o 9 R. 7 (sic.) shall be considered thereafter. For 10.4.96." The Order has left the defendant dissatisfied. It feels that for purposes of deciding the application neither the court could direct it to file the affidavit nor the written contract allegedly entered into with the main contractor. Hence this petition. Under the Code of 1882 it was not obligatory upon the court to reject a plaint if it did not disclose a cause of action. However, under Order 7 rule II the Court is to reject a plaint if it does not disclose a cause of action. The law in this respect is laid down by the Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, and it is that if on a meaningful and not formal reading of a plaint it is manifest that the plaint is vexatious or meritless in the sense of not disclosing a clear right to use, trial court should exercise its power under Order 7 rule II of the Code, and should reject the plaint. Thus it is the meaningful reading of the plaint itself which is required. Of course, if clever drafting has created the illusion of a cause of action, the trial judge would do well to "nip it in the bud at the first hearing by examining the party searchingly under Order X CPC ." (See T.Arivandandam v. T.V.Satyapal, supra). But then," the learned Civil Judge has not resorted to Order X. He has not followed even what is required to be followed under Order 7 Rule 11. What is to be determined by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not or whether the suit appears from the statement in the plaint to be barred by any law, is to look into the plaint, read it meaningfully and to find out from such reading of the plaint itself as to whether it needs to be rejected or not. The Court is not to go in for a roving enquiry into the truthfulness or falsity of the allegations. That would be the subject matter of the issues. Unfortunately, by calling upon the defendant to file the contract entered into with the main contractor and by asking it to file an affidavit furnishing some information, the learned civil judge has not only ignored the law but has frustrated its object too. For the reasons recorded above, the impugned order is set aside. The learned Civil Judge is directed to decide the application in accordance with law.