

(2007) 08 DEL CK 0200

In the Delhi High Court

Case No : I.A. 3566/04 in C.S. (OS) 146 of 2004

Sunila Wadhwan and Others

APPELLANT

Vs

Perfect Drugs Limited and Another

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Companies Act, 1956 — Section 446

Citation : (2007) 99 DRJ 497

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Anil Kher and D.R. Bhatia, for the Appellant; Siddharth Yadav.
Advocate for Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This is an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") filed on behalf of the defendant No. 2 for rejection of the plaint. The ground taken in the application is that the suit is barred by law. According to the learned Counsel for the defendant No. 2 (Mr. Arun Sahay), the suit has been filed, inter alia, against the defendant No. 1 (Perfect Drugs Limited) although the defendant No. 1 had been wound up on 22.1.2001 Section 446 of the Companies Act, 1956, according to him, bars a suit against a company after an order of winding up has been passed. According to the learned Counsel for defendant No. 2, the plaintiffs knew about the winding up of the defendant No. 1, yet filed this present suit. He submitted that since the suit is barred by Section 446 of the Companies Act, 1956, the plaint has to be rejected. The learned Counsel also referred to a Division Bench decision of the Bombay High Court in *Eastern Steamship Private Ltd. v. Pucto Private Ltd. And Anr.* 41 Co. Cases 43. The said decision points out that permission of the Company Court has to be taken prior to the filing of a suit against a company which has been wound up. Since no such permission was taken, it is submitted that the suit is not maintainable and, therefore, the plaint

is liable to be rejected.

2. The learned Counsel for the plaintiffs, however, submitted that the suit is not barred. He submitted that, initially, the property in question was leased out under two separate leases to the defendant No. 1. The same was utilised by the defendant No. 1 for the purpose of residence of defendant No. 2, who was then the Managing Director of Defendant No. 1. After the expiry of the leases by efflux of time on 14th July, 2001, the defendants were bound to vacate the premises. It was also pointed out by the learned Counsel for the plaintiffs that the factum of the defendant No. 1, having been wound up, was not known to the plaintiffs earlier. However, this would not alter the course of the case. He submitted that the defendant No. 1, having been wound up, the defendant No. 2 had no authority to continue in possession of the premises in question. Legal notices had been served both upon the defendant No. 1 as well as on the defendant No. 2. The defendant No. 2 had replied to the said notice by a letter dated 22nd December, 2003, wherein he set up a case claiming tenancy on his own right.

3. Be that as it may, after having considered the arguments advanced by the learned Counsel for the parties and after having examined the averments made in the plaint as well as the documents accompanying the plaint, I am of the view that this application under Order VII Rule 11 CPC cannot be allowed. The first reason is that the suit is not just against the company (defendant No. 1) but also against the defendant No. 2. In terms of the averments in the plaint, the defendant No. 2 has been in occupation of the premises owned by the plaintiffs and this occupation is unauthorised. As per the plaint, no lease deed had been executed nor had any arrangement been made between the plaintiff and the defendant No. 2 for the defendant No. 2 to continue in possession or to be in possession of the premises in question. Therefore, according to averments made in the plaint, the defendant No. 2 is in unauthorised occupation of the property belonging to the plaintiffs. Even if I assume, for the time being, that the suit against the defendant No. 2 cannot be maintainable, it is well settled that the plaint cannot be rejected in part. The suit is definitely maintainable against the defendant No. 2. The submission of the learned Counsel for the defendant No. 2 is that the defendant No. 2 has been sued in his personal capacity. If that be the case then the suit against the defendant No. 2 shall survive in any event. Since the plaint cannot be rejected in part, therefore, in my view, this application cannot be allowed and the same is rejected.