

Vivek Mehta Vs. Vijay Sah and ors

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Court : Delhi

Decided On : Oct-29-2014

Judge : A. K. Pathak

Appellant : Vivek Mehta

Respondent : Vijay Sah and ors

Judgement :

§~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on 29th October, 2014 + RFA2942014 VIVEK MEHTA Through Appellant : Mr. Darpan Wadhwa and Mr. Nakul Sachdeva, Advs. versus VIJAY SAH & ORS Through Respondents :Mr. Arun Kr. Gupta and Mr. Achal Gupta, Advs. for respondent nos. 2 and 3 CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL)
1. By the order impugned in this appeal trial court has allowed the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) of respondent nos. 2 and 3 and has rejected the plaint under Order 7 Rule 11 (a). Meaning thereby, trial court has rejected the plaint on the ground that it does not disclose any cause of action.

2. It is trite law that for the purpose of disposal of an application under Order 7 Rule 11 CPC the Court has to only consider the averments made in the plaint and the documents annexed therewith. Defence of the defendant, as contained in the written statement or in the application under Order 7 Rule 11 CPC, has not to be looked into. It may further be noted that averments made in the plaint have to be

taken on its face value for the purpose of disposal of application under Order 7 Rule 11 CPC.

3. I have perused the plaint and do not find it to be without any cause of action. Appellant has categorically stated in the plaint that he had taken loan from respondent No.1 on different occasions during the period 2007 to 2011, since he had sustained losses in the business. It has been further stated that certain blank cheques were given by the appellant to respondent No.1 towards security. He made part payments but could not clear the entire loan. Respondent No.1 with the help of local mafia threatened the appellant with dire consequences including threat to his life and to his family members and extended pressure to execute the sale deed of property in his favour or to face dire consequences. Respondent No.1 suggested the appellant to take loan from the bank by depositing the title deeds to which suggestion he disagreed. Respondent No.1 introduced one Shri Ram Kishan Jha to him, who suggested that the appellant should execute a sale deed in respect of small portion of 100 sq. feet in favour of respondent No.1 to enable the respondent No.1 to obtain bank loan, installments whereof be paid by the appellant. Accordingly, in good faith and trust appellant executed a registered sale deed in respect of one shop bearing No.66-D, Kamla Nagar, Delhi on ground floor without roof rights. However, physical possession of the said shop was not given to respondent no.1 and was retained by the appellant. Respondent No.1 made effort to raise loan from the bank but could not succeed. Therefore, appellant asked the respondent No.1 to return the sale deed so the same is cancelled. Respondent refused to give the sale deed. Appellant disposed of his assets in Village Mukandpur, Delhi and returned the entire loan amount to respondent No.1 along with interest but still sale deed and blank cheques were not returned. Appellant has categorically averred in para 10 of the plaint that certain conversations, in this regard, were recorded by him on his mobile phone on 6th April, 2012. Portion of such conversations has even been quoted in para 10 of the plaint. Appellant has further alleged that respondent No.1, with the help of local goons, attempted to take physical possession of the suit premises. With these allegations, appellant has prayed that sale deed be declared as null and void and be cancelled. He has further prayed that Sub-Registrar be directed to cancel the sale deed. Decree of permanent injunction has also been prayed against the

respondents from selling, transferring, alienating or creating third party interest in the said shop.

4. Initially suit was filed against the respondent No.1. In the written statement, respondent No.1 stated that he had sold the suit property to respondent nos. 2 and 3. Accordingly, respondent nos. 2 and 3 were impleaded as defendant nos.2 and 3 in the suit.

5. Specific averments have been made in the plaint that sale deed was executed under threat, coercion and duress. Thus, it cannot be said that plaint does not disclose any cause of action. Defence taken by respondent nos. 2 and 3 can be considered only during the trial. Accordingly, I am of the view that trial court has erred in holding that plaint does not disclose any cause of action.

6. For the foregoing reasons, impugned order is set aside and matter is remanded back to trial court for proceeding further in the matter in accordance with law. It may further be noted here that respondent nos. 2 and 3 have also filed a suit against the appellant for possession, which is pending before the trial court and is listed for 15th December, 2014. Parties shall appear before the trial court on 15th December, 2014.

7. Appeal is disposed of in the above terms. A.K. PATHAK, J.

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