

**(2010) 02 DEL CK 0247**

**Delhi High Court**

**Case No:** CRP No. 28 of 2010 and CMS No. 2560-61 of 2010

Gunjan Khanna and Another

APPELLANT

Vs

Arunbha Maitra

RESPONDENT

**Date of Decision:** Feb. 11, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

**Citation:** (2010) 3 ILR Delhi 588

**Hon'ble Judges:** Hima Kohli, J

**Bench:** Single Bench

**Advocate:** Shweta Bharti with Mr. Manoj Kumar, for the Appellant;

**Final Decision:** Dismissed

### **Judgement**

Hima Kohli, J.

The present petition is directed against the order dated 3.11.2009 passed by the learned Additional District Judge, dismissing the application filed by the defendant (petitioner No. 1 herein) under Order 7 Rule 11 CPC seeking rejection of the plaint of the respondent (plaintiff in the court below) on the ground that the same does not disclose any cause of action against the petitioner No. 1. Counsel for the petitioner states that the respondent erred in impleading the petitioner No. 1 as a defendant in a suit instituted by him for a decree of Rs. 4,35,450/- as compensation for the loss suffered on account of damages to goods at his premises as also for a sum of Rs. 2,00,000/- as compensation for harassment. Separate written statements were filed by the petitioner No. 1 (defendant No. 1 in the court below) and the petitioner No. 2 (defendant No. 2 in the court below). One of the preliminary objections taken in the written statement by the petitioner No. 1/defendant No. 1 was that the suit suffered from non-joinder and mis-joinder of necessary parties. It was averred that the petitioner No. 1/defendant No. 1 had been wrongly impleaded in the said proceedings. A similar preliminary objection was raised by the petitioner No. 2/defendant No. 2 in his written statement. However, an application under Order 7

Rule 11 CPC was filed only by the petitioner No. 1/defendant No. 1, praying inter alia for rejection of the plaint of the respondent/plaintiff on the ground that there was no cause of action qua her and no privity of relationship between her and the respondent/plaintiff.

2. After considering the submissions made by the counsel for the petitioner No. 1/defendant No. 1, the trial court observed that the plaint could not be rejected on the ground of non-disclosure of cause of action and that assuming the averments made by the respondent/plaintiff in the plaint to be true at the said stage, it did disclose a cause of action against both the defendants (petitioners herein) and hence, there was no reason to reject the plaint. As a result, the application was dismissed.

3. Counsel for the petitioner submits that the learned Additional District Judge erred in dismissing the application of the petitioner No. 1/defendant No. 1 and he failed to appreciate the fact that as no investigation had taken place after filing of FIR and no charge sheet has been filed pursuant thereto and that the criminal trial has yet to commence, it was absurd for the respondent/plaintiff to presume that the petitioners/defendants were liable to pay any damages to him. It is further contended by the counsel for the petitioners that no cause of action was disclosed against the petitioner No. 1 as the FIR is not an evidence in itself.

4. This Court has examined the documents placed on the record, particularly the plaint filed by the respondent/plaintiff. The plea of the counsel for the petitioners/defendants that no cause of action has been disclosed by the respondent/plaintiff in the plaint, has to be examined in the light of the averments contained in the plaint. The plaintiff is the master of pleadings and at the initial stage, the averments contained in the plaint are to be examined as they stand, so as to conclude as to whether a cause of action has accrued in favour of the plaintiff or not.

5. It is settled law that "the rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure" [Refer: [Church of North India Vs. Lavajibhai Ratanjibhai and Others](#), ]. This view was reiterated in the case of [Abdul Gafur and Another Vs. State of Uttarakhand and Others](#), wherein the Supreme Court observed as below:

16. It is trite that the rule of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7, Rule 11 of the Code. Similarly, a plea of bar to jurisdiction of a civil court has to be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for

therein must be considered in their entirety and the court would not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint.

6. For the purpose of deciding an application under Order 7 Rule 11 CPC, the court is only required to examine the plaint and neither the written statement, nor any other pleadings should be a matter of consideration at the said stage. In this context, the Supreme Court in the case of [Mayar \(H.K.\) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others](#), observed as below:-

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

(emphasis added).

7. In the case of [Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another](#), the Supreme Court, while discussing the expression "cause of action" observed:-

139. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence.

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151. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to

disclose a cause of action is distinct from the absence of full particulars, [see [Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Others,](#) ]

8. Thus it is apparent from the case law noted above, that while considering the expression "cause of action" as understood in civil proceedings, the court is required to examine the bundle of facts which gives rise to an enforceable claim, and forms the basis of the institution of the plaint.

9. In the present case, the respondent/plaintiff has instituted the suit against the petitioners on the ground that late in the night of 5.5.2008, there was a blast which caused injuries and his wife got buried under the debris. In para 7 of the plaint, it is averred that 40 houses were damaged due to the blast, apart from 30 cars, and two persons were seriously hurt. It is further averred that an FIR was filed against the petitioners/defendants for their negligence and for maintaining a gas cylinder in the premises from where they were operating the business of Chinese fast food under the name "Wok Inn Express", which was adjacent to the premises of the respondent/plaintiff. Attributing the aforesaid blast to the negligence to the petitioners/defendants, the plaintiff/respondent instituted the present suit in the trial court in July, 2008, praying inter alia for damages to goods and articles at his residence, and also compensation for the mental agony and harassment suffered by him and his wife.

10. The respondent/plaintiff sought the relief on the basis of the cause of action, reproduced hereinbelow:-

17. That the cause of action arose in May 2008 when because of the negligence of the Defendants the cylinder blast occurred. It also arose on all those days when Plaintiff and nearby residents made the warnings and requests to the Defendants to take proper precautions of gas cylinders etc.

11. The averments contained in the plaint have to be taken as correct by the Court while exercising its powers under Order 7 Rule 11 CPC. That the investigation pursuant to the FIR may exonerate the respondent ultimately or that the FIR alone could not be a basis for instituting a suit as contended by the counsel for the petitioner, is a matter which can only be decided upon evidence being led by the parties. The plaintiff may not ultimately succeed in establishing his case, when the matter is taken to trial, is a different matter.

12. After perusing the plaint, in the light of the settled law, this Court is of the opinion that at this stage, the trial court rightly concluded that the plaint was not liable to be rejected for failure to disclose any cause of action. Instead, taking into consideration the preliminary objection raised by the petitioners/defendants in their written statements, an issue was framed on the very same date, i.e., on 03.11.2009, as to "whether the suit of the plaintiff was bad for mis-joinder and non-joinder of necessary party". The second issue framed was as to "whether the plaintiff is entitled for decree of compensation/damages from the defendants". This itself is

sufficient to assuage the anxiety expressed by the petitioners/defendants with regard to their "erroneous impleadment" by the respondent/plaintiff, as claimed by them. In view of the aforesaid facts and circumstances, this Court does not find any material irregularity in the impugned order or mis-appreciation of facts or law by the trial court which deserves interference. The present petition is dismissed along with the pending applications.