

* IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No. 495/1999

Date of decision : 03.12.2009

IN THE MATTER OF :

BRIJ MOHAN SHARMA Appellant
Through: Mr. S.K. Bansal, Adv.

versus

M/S MILTON PLASTICS Respondent
Through: Mr. Gurinder Singh with
Ms. Supreet Kaur, Ms. Navneet Moni
and Mr. Dhruva Bhagat, Advs.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (ORAL)

1. The present appeal is directed against the judgment dated 15.5.1999, passed by the trial court in a suit for permanent injunction and rendition of accounts filed by the appellant against the respondent, in respect of the trademark, "Milton", relating to electrical goods including electrical appliances.

2. The opening para of the impugned judgment shows that the trial court proposed to decide two applications for interim orders, one filed by the appellant in a suit instituted by it and the other filed by the respondent, who had filed a written statement-cum-counter claim against the appellant. While dismissing the interim application of the appellant and granting relief

to the respondent on its interim application, the trial court proceeded to dismiss the suit of the appellant with the observation that the cause of action did not lie with the appellant but with the respondent and that no useful purpose would be served by keeping the suit of the appellant pending.

3. Counsel for the appellant submits that the trial court could not have summarily dismissed the suit of the appellant in such a cursory fashion without putting the same to trial, particularly when the cause of action for instituting the suit was clearly disclosed in para 13 of the plaint.

4. Assuming that the trial court had passed the aforesaid order under the provision of Order 7 Rule 11 (a) CPC, in the first instance, the suit could not have been 'dismissed' and only the plaint could have been 'rejected'. The clear distinction between "rejection of a plaint" and "dismissal of a suit", cannot be lost sight of. The effect of dismissal of a suit is entirely different and distinct from the effect of rejection of the plaint. In the case of Inspiration Clothes & U. Vs. Colby International Ltd. reported as **88 (2000) DLT 769**, a Division Bench of this Court while examining the order of a Single Judge, dismissing the suit of the appellant therein, on an application preferred by the respondent under Order 7 Rule 11 CPC holding that the suit was not maintainable as the appellant did not have a cause of action, observed as below :

"Para 10: ...Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is sufficient to set aside the impugned order. Learned Single Judge instead of proceeding to reject the plaint, dismissed the suit, which approach is also erroneous. **The effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under Order 7 Rule 11, CPC, filing of a fresh plaint in respect of the same cause of action is specifically, permitted under Rule 13 of Order 7, CPC. Altogether different consequence follows in the event of dismissal of**

suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all or that no suit was instituted. Order of dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11, CPC, learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in T. Arvindandam's case (Supra) (AIR 1977 SC 2421) relied upon by learned Counsel for the appellant, it was held 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, the Trial Court should exercise his power under Order 7 Rule 11, CPC taking care to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable for damages for its acts of omission and commission. It would be an altogether different situation that the plaintiff might not ultimately succeed in obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be maintainable against the defendant and that plaintiff had a cause of action only against defendant's principal and its parent unit in Hong Kong, but such aspect could not have been gone into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages." (emphasis added)

5. If the trial court was convinced that the plaint read as a whole, did not disclose any cause of action and was therefore liable to be rejected, the court ought to have exercised its powers under Order 7 Rule 11 CPC. Fact remains that a suit once instituted by a litigant, has to be disposed of strictly as per the procedure prescribed in the Code and not in a cursory or summary fashion. In the case of Abdul Gafur & Anr. vs. State of Uttarakhand & Ors., reported as **(2008) 10 SCC 97**, 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 de'hors the factual averments made in the plaint."

6. In view of the aforesaid facts and circumstances, the impugned judgment insofar as it dismissed the suit of the appellant, is set aside and the order to the aforesaid extent is quashed. The suit is restored to its original position.

7. The Registry is directed to release the trial court record forthwith. The parties are directed to appear before the trial court for further proceedings in the suit on 08.01.2010. It is made clear that while disposing of the present appeal, this Court has not expressed any opinion on the merits of the case and the trial court shall be at liberty to decide the same in accordance with law.

8. The appeal is disposed of with no orders as to costs.

HIMA KOHLI,J

DECEMBER 03, 2009
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This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

Publisher has only added the Page para for convenience in referencing.