

**SUPREME COURT OF INDIA**

Alpana Gupta through Power of Attorney holder

Vs.

APG Towers Pvt. Ltd.

C.A.No. 6411-6412 of 2019

(Abhay Manohar Sapre and R.Subhash Reddy,JJ.,)

19.08.2019

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(C)No.31539-31540 of 2017

1. S.L.P.(c) Nos.31539-31540/2017 are filed against the final judgment and order dated 27.07.2017 and 23.08.2017 in CRP Nos. 157/2017 and 99/2017 and S.L.P.(c) Nos. 5318-5319 of 2018 are filed against the final judgment and order dated 27.07.2017 in C.R.P. No.99/2017 and the order dated 23.08.2017 in CM No.30335 of 2017 in CRP No.99/2017 passed by the High Court of Delhi at New Delhi.

2. Leave granted.

3. These appeals involve a short point as would be clear from the facts mentioned hereinbelow.

4. The appellant of CAs @ SLP Nos. 31539-31340/2017 is the plaintiff and the respondents are the defendants in Civil Suit No.1641/2016 in the Court of District & Sessions Judge, Rohini Courts, Delhi out of which these appeals arise.

5. So far as the connected CAs @ SLP Nos. 5318-5319/2018 are concerned, these are filed by defendant No.1 of the aforementioned suit against the plaintiff(appellant) and defendant No.2. In this way, all the appeals arise out of the same suit.

6. The appellant in CAs @ SLP 31539-31540/2017 has filed the aforementioned suit against the respondents for declaration and permanent injunction and in the alternative for recovery of damages. The subject matter of suit is a land - details of which are described in para 1 of the plaint. It is not necessary to detail the averments on which the suit is filed.

7. Suffice it to say, the defendants filed an application under Order 7 Rule 11 of the Code

of Civil Procedure, 1908 (hereinafter referred to as “the Code”) and sought dismissal of the suit. This application was contested by the plaintiff (appellant in CAs @ SLP 31539-31540/2017). By order dated 16.01.2017, the Trial Court dismissed the application giving rise to filing of the revisions by the defendants. By impugned order, the High Court while disposing of the revisions passed the following consequential order which reads as under:

“(i) The respondent No.1/plaintiff is at liberty to apply for amendment of the plaint on or before 11th August, 2017.

(ii) If the said application is filed, the same shall be considered by the suit Court on its own merits and it will be open to the petitioners/defendants to take all the pleas in opposition thereto;

(iii) However, if the application for amendment is not filed within the time aforesaid, then the right to apply for amendment in pursuance hereto shall stand closed and these petitions shall be deemed to have been allowed and the impugned order set aside and the plaint in the suit as existing shall stand rejected.”

8. It is against this order, the plaintiff felt aggrieved and filed appeals (CAs @ SLP (c) Nos.31539-31540/2017). So far as the defendants are concerned, they also filed the connected appeals (CAs @ SLP(c) Nos.5318-5319/2018) against the impugned order.

9. Heard learned counsel for the parties.

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals filed by the plaintiff, set aside the impugned order and dismiss the applications filed by the defendants under Order 7 Rule 11 of the Code with the following observations.

11. In our opinion, having regard to the nature of controversy and keeping in view the averments made in the plaint coupled with the nature of the objections raised by the defendants in their applications, the proper course for the defendants is to file their respective written statements, if not so far filed, and raise all the pleas on facts and laws in their written statement in support of their contentions rather than to raise the pleas by taking recourse to the provisions of Order 7 Rule 11 of the Code. In other words, the pleas raised by the defendants in their applications under Order 7 Rule 11 ought to be raised in the written statement. Such pleas, in our view, do not fall within any of the clauses of Order 7 Rule 11 of the Code.

12. On such written statements being filed, the Trial Court will frame appropriate issues relating to facts and law arising out of the pleadings and try them as provided under Order 14 of the Code on their respective merits.

13. It is with these observations and liberty granted to the parties, we allow CAs @ SLP(c) Nos.31539-31540/2017 filed by the plaintiff and set aside the impugned order as also the

order passed by the Trial Court.

14. Needless to say, the Trial Court shall decide the suit strictly in accordance with law on merits without being influenced by any observation made by the Trial Court and the High Court in the present proceedings.

15. In the light of the order passed above in CAs @ SLP(c)Nos.31539-31540/2017), CAs @ SLP© Nos.5318-5319/2018 are disposed of.