

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution : 10.03.2010
Date of Reserving the order : 31.01.2025
Date of Decision : 24.11.2025

FIRST APPEAL NO.- 50/2010

IN THE MATTER OF

Ms. Shobha Rani
Proprietor of M/s Hearing House
At: D-107, South Ganesh Nagar,
Delhi-110092

(Mr. Ram N. Sharma, Advocate)
.....Appellant

VERSUS

National Insurance Co. Ltd.
At: Building No. 2 & 3, Central Market,
West Punjabi Bagh, New Delhi-110026

(Mr. Pankaj Seth, Advocate)
.....Respondent

CORAM:

HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

Present: Mr. Ram N. Singh, counsel for Appellant
Mr. Yuvraj Sharma, counsel for Respondent

PER: HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER

ORDER

1. By this judgment, I shall dispose of the appeal filed by the Appellant, Ms. Shobha Rani against the impugned order dated 10.12.2009 passed by Ld. Consumer Dispute Redressal Forum (West), Community Center, Janakpuri, Delhi in Complaint Case No. CC/197/2004 titled as "Shobha Rani Vs. National Insurance Co. Ltd." by which the complaint filed by the Complainant was dismissed by Ld District Forum on the ground that the complaint was barred by the principle of resjudicta.
2. Briefs facts of the case as per the complaint are that Ms. Shobha Rani, the Complainant (*Appellant herein*) was sole proprietor of M/s Hearing House located at 39-40, 2nd Floor, Vishal Market, Chandni Chowk, Delhi-6. She was carrying on the business of sale and purchase of photographic material. For the stocks lying in the shop, she obtained the burglary and fire insurance policy from Opposite Party (*Respondent herein*) for a sum of Rs.20,00,000/-. On 17.05.1995, fire broke out in Vishal Market due to which a lot of shops were gutted, including the shop of Complainant and the entire stock lying in her shop along with other valuables and records was destroyed.
3. It was the further case of Complainant that for running the above said business, she had taken a loan from Punjab National Bank, Narayana Branch. She lodged the claim with Opposite Party for an amount of Rs.20,00,000/-, which appointed the Surveyor. Further, the lots of stock was also assessed by Punjab National Bank on the basis of stock statement and the photographic material and films which were rendered useless were not taken into consideration and the Surveyor valued the loss to the tune of

Rs.14,10,407/-. But, the Opposite Party did not take into consideration the report of Surveyor and she was offered an amount of Rs.5,46,000/- only by Opposite Party. On 15.09.1985, she was asked to sign the receipt for a sum of Rs.5,46,000/-, but the officials of Opposite Party maliciously inscribed the words **“full and final settlement”** on the above receipt signed by her.

4. It was the further case of Complainant that she did not sign the receipt for a sum of Rs.5,46,000/- towards full and final settlement of her claim. But, the Opposite Party obtained her signatures thereon by misleading and thereafter, added the words "full and final settlement."
5. Thus, she filed the complaint against the Opposite Party for direction to pay her the balance amount of Rs.8,64,407/- in terms of the Surveyor's report alongwith with compensation and litigation cost.
6. However, the complaint filed by the Complainant was dismissed by Ld District Forum on 10.03.2004 on the ground that the services of OP were availed by her for commercial purposes.
7. Thereafter, the Complainant preferred an appeal before this Commission for setting aside the order dated 10.03.2004 passed by Ld District Forum and the Commission set aside the order dated 10.03.2004 and remanded back the case to Ld District Forum to decide the matter fresh on merits.
8. After remand back of the case by this Commission, notice of complaint was issued to Opposite Party.
9. The Opposite Party filed the written statement before Ld District Forum, wherein it had prayed for dismissal of

complaint on the principle of res judicata by submitting that the Complainant had also filed a Civil Suit before Sh. P.K. Saxena, Ld ADJ, Tis Hazari Court for recovery of Rs.14,54,000/- on same cause of action between the same parties and that suit was decided against the Complainant on 16.07.2005.

10. Complainant filed rejoinder to the written statement wherein she admitted that she had filed a Civil Suit in the Court of Ld. ADJ on same cause of action, but the Civil Suit was rejected under Order 7 Rule 11 CPC. Thus, the principle of res judicata will not apply as her complaint was rejected under Order 7 Rule 11 and doctrine of res judicata is applicable only in cases where the suit has been heard and disposed of on merits.

11. After hearing Ld counsel for the parties and going through material on record, Ld District Forum passed the following order: -

“At the very outset we would like to observe that a perusal of the order of Ld. ADJ dated 16.07.05 shows that the same are based on the merits of the present case. Orders of Civil Court referred to above establish that the Ld. ADJ duly considered the pleas of the complainant regarding the receipt for Rs. 5,46,882/- dated 15.09.1995. Ld. ADJ with regard to the receipt which was exhibited in the proceedings as exhibit P-1 clearly observed as under:

“On behalf of the defendant a photocopy of the relevant receipt has been placed on record and as already stated that the said receipt is Ex.P-1. It is signed by the plaintiff at point 'A'. So this is an admitted document. Even during the course of arguments it was very fairly conceded by Ld. Counsel for the plaintiff that vide receipt Ex.P-1 signed by the plaintiff she had received a total sum of Rs. 5,46,882/- on 15.09.1995.”

Then in para 11 of the judgment, Ld. ADJ further observed as under:

“The aforesaid admitted receipt Ex. P-1 vide which money had been paid to the plaintiff by defendant no.1 in respect of the loss suffered by her on account of the fire clearly goes to show that the sum of Rs. 5,46,882/- had been received by the plaintiff in payment of full and final settlement of her claims. Plaintiff in the plaint claims that the said document had been received by her without prejudice to her rights and under strong protest. The admitted receipt Ex.P-1 does not say that the money mentioned therein had been received by the plaintiff without prejudice to her rights and under protest. Receipt Ex.P-1 clearly mentions that the money mentioned therein had been given to her in full and final settlement of her claims. In the plaint plaintiff has not explained at all the circumstances in which the said receipt Ex.P-1 had been issued by her. It is not the case of the plaintiff as disclosed in the plaint that the said receipt had been extracted from her by defendant No.1 by force or under coercion. It is also not the case of the plaintiff that at the time of execution of the said admitted receipt Ex.-P-1 by her, her free consent was not there.”

Further in para 13, Ld. ADJ observed as under :

“On a plain and simple reading of Ex.P-1 it becomes absolutely clear that the plaintiff had received a sum of Rs. 5,46,882/- mentioned therein on 15.09.1995 in full and final settlement of all her claims and her assertion now in the plaint that the said amount had been received under protest and without prejudice to her rights is simply an afterthought and is liable to be rejected.”

No doubt Ld. ADJ in the operative portion of orders dated 16.07.2005 observed that the plaint was rejected under Order 7 Rule 11 but mere mention of the provisions of Order 7 Rule 11 in no way remotely indicate that Ld. ADJ did not consider the merits of the case and merely rejected the plaint on some technical grounds. The provisions of Order 7

Rule 11(a) provide that a plaint shall be rejected where it does not disclose a cause of action. This provision enables the Civil Court to reject the plaint where it does not disclose a cause of action. A plain reading of the orders of Ld. ADJ in entirety shows that the Ld. ADJ had concluded on merits that the plaint does not disclose a cause of action as the plea raised against the receipt for Rs. 5,46,882/- towards full and final settlement of complainant's claim were devoid of any merit.

The present complaint, therefore, before this Forum is barred by the principle of res judicata and is liable to be dismissed. We order accordingly. Parties are left to bear their own cost. A copy of this order as per the statutory requirements be forwarded to the parties free of charge. Thereafter, the file be consigned to the Record Room."

12. It is the case of Appellant that the Ld District Forum failed to appreciate that the Civil Suit filed by her was dismissed by Ld ADJ only on the basis of application under Order 7 Rule 11 CPC and not on merits. The impugned order passed by Ld District Forum is based on surmises and conjectures and the principle of resjudicta is not applicable to her case in view of judgment of Hon'ble Supreme Court in Ram Gobinda Daw & Ors. Vs. Smt. H. Bhakta Bala Dassi Etc. reported in AIR 1971 (SC) 664. Ld District Forum failed to consider that the claim under the policy has to be paid in accordance with the assessment of Surveyor and non-settlement of claim is nothing but an illegal act of Respondent and amounts to deficiency in service on the part of Respondent. Further, signing a discharge voucher even in full and final settlement as alleged by Appellant is not a bar to claim the balance amount as per the assessment of Surveyor in view of judgment of Hon'ble Supreme Court in United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton &

General Mills reported in 1999 NCJ SC. The insurance policy is contract between the insurer and insured and the terms of contract/agreement have to be strictly construed to determine the liability of insurer.

13. The Respondent has filed reply to the appeal wherein it has prayed for dismissal of the appeal with costs by submitting that the impugned order has been passed by Ld District Forum after appreciating the facts and pleadings of the parties and Ld District Forum has rightly dismissed the complaint of Appellant.

13. The Appellant and the Respondent have filed their written arguments.

14. I have heard arguments from Ld counsel for the parties and gone through the material available on record.

15. **The question for consideration is whether there is any illegality or material irregularity in the impugned order passed by Ld District Forum.**

16. It is worth noting that the complaint filed by the Appellant was dismissed by Ld District Forum by observing that the complaint was barred by the doctrine of resjudicta.

17. Before proceeding further, it is imperative to go through the Civil Suit No. 473 of 2004 filed by the Appellant before the Court of Ld ADJ, Delhi which is annexed at Page no. 29 to 50 of appeal and the order dated 16.07.2005 passed by Ld ADJ in the said Civil Suit, which is also annexed at Page no. 51 to 80 of appeal.

18. A perusal of same shows that the Appellant, Ms. Shobha Rani had filed the Recovery Suit bearing no. 473/2004 against the Respondent as well as Punjab National Bank for recovery of Rs.14,54,000/- and permanent injunction.

19. It is significant to note that as the Appellant had availed the credit facility for a sum of Rs.20,00,000/- from Punjab National Bank and the bank had also filed a Recovery Suit against the Appellant for the balance amount of Rs.15,00,000/-
20. It is further worth noting that in the said Recovery Suit the following preliminary issue was framed by Ld ADJ, Tis Hazari:
“Whether the present suit is not maintainable and is liable to be rejected under Order 7 Rule 11 CPC?”
21. **It is worth mentioning that defendant no. 1 had vehemently argued before the Ld ADJ that the suit filed by the plaintiff was barred by limitation and therefore, is liable to be rejected under Order 7 Rule 11 CPC.**
22. **After hearing arguments from Ld counsel for plaintiff and defendant no. 1 & 2, Ld ADJ held that as per plaintiff’s own case, the incident of fire took place on 17.05.1995 and she suffered a loss of Rs.20,00,000/- on account of fire, which has broken out in her shop. The loss in the said fire was assessed by Surveyor was Rs.10,71,658, but and only a sum of Rs.5,46,822/- was paid by the defendant no. 1 to plaintiff on 15.09.1995 vide receipt ex P-1 towards full and final settlement of all her claims, but she filed the suit in the year 2004 i.e. after about 8½ years, which is clearly barred by limitation.**
23. **Further, Ld ADJ also observed that the plaintiff had categorically admitted that she had borrowed loan from defendant no. 2, who had also filed suit before Debt Recovery Tribunal, Delhi and officers of defendant no. 2 were threatening her to take forcible possession of premises bearing**

no. 20/2801, Beadon Pura, Ajmal Khan Road, Karol Bagh, New Delhi-5, and thereafter, she sought the relief of permanent injunction against the defendant no. 2/Punjab National Bank.

24. It is further worth noting that Ld ADJ, Delhi has relied upon Section 17 & 18 of The Recovery of Debts Due to Banks and Financial Institutions Act 1993 and held that the Civil Court was not having jurisdiction to deal with the issue as the jurisdiction of the Civil Courts was expressly barred in view of Section 9 of Code of Civil Procedure. Hence, Ld ADJ, Tis Hazari held that the suit filed by the plaintiff/Appellant, Ms. Shobha Rani was not maintainable against the defendants and rejected the suit Order 7 Rule 11 CPC and decided the preliminary issue in favour of defendants.

25. The next question that arises for consideration is whether the doctrine of resjudicta applies to a suit which has been rejected under Order 7 Rule 11 CPC.

26. To deal with this issue, I would like to refer the judgment of Hon'ble Apex Court in Pandurangan Vs. T. Jayarama Chettiar & Anr. Civil Appeal No. 7743 of 2025 arising out of SLP (C) No. 18230 of 2025: 2025 Live Law (SC) 698, wherein Hon'ble Supreme Court has allowed the appeal filed by the Appellant against the judgment of High Court of Madaras which dismissed the Civil Revision Petition against the order passed by District Magistrate Cum Judicial Magistrate, who allowed the objection of defendant no. 1 to the plaint under Order 7 Rule 11 CPC on the ground of resjudicta.

The brief facts of the case referred above were that the appellant had purchased the disputed property from one Mr. Hussain Babu in

1998, who had in turn purchased it from Ms. Jayam Ammal in 1991. Appellant contended that while being in peaceful possession of the property, an advocate/commissioner sought to inspect his property. When he made necessary enquiries, he came to know that defendant No. 1, claiming to be a co-owner filed a suit for partition against Ms. Jayam Ammal and others and also secured an ex parte decree in his favour. It is in execution of that ex parte decree that the advocate-commissioner was appointed by the Court. Compelled by these circumstances, the appellant instituted the present suit for declaration of title and permanent injunction. It was the specific contention of the appellant that the ex parte decree was fraudulently and collusively obtained, and it was not binding on him.

The defendant opposed the suit by filing a written statement. During the pendency of suit, an application under Order VII Rule 11 of CPC was also filed by defendant contending that the plaintiffs suit is barred by res judicata as the earlier ex parte decree has attained finality. The appellant countered it by contending that he was not a party to the earlier suit and therefore the principle of res judicata would not apply.

While allowing the appeal, the Hon'ble Supreme Court also relied upon its decision **in Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors (2021) SCC 99**, wherein it was held that adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC and laid down the following guiding principles for deciding an application under Order 7 Rule 11 CPC:

- 1) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

2) The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

3) To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

The Hon'ble Supreme Court held that since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

While disposing the appeal, the Hon'ble Supreme Court also relied upon its earlier judgment in Keshav Sood V. Kirti Pradeep Sood Civil Appeal No. 584 of 2023, wherein the Hon'ble Supreme Court took a strong view against the plea of res judicata being raised in applications seeking rejection of plaint and held as follows:

“5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of

Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

26. Thus, a perusal of above referred judgment makes it clear that the principle of resjudicta does not apply to a case which has been rejected under Order 7 Rule 11 CPC.

27. Now, coming to the facts of present case, it is crystal clear that the Ld District Forum has dismissed the complaint of Appellant, Ms. Shobha Rani by observing that the suit was barred by the principle of resjudicta.

28. **Since, the doctrine of resjudicta does not apply to the suit which has been rejected under Order 7 Rule 11 CPC, I am of the considered view that Ld District Forum was not justified in dismissing the complaint of Appellant by observing that the complaint was barred by the doctrine of resjudicta, I am of the considered view that the impugned order passed by Ld District Forum suffers from material irregularity and illegality in this regard and is not sustainable in the eyes of law.**

29. Accordingly, the appeal filed by the Appellant is hereby allowed and the impugned order dated 10.12.2009 passed by Ld. Consumer Disputes Redressal Forum (West), Community Center, Janakpuri, Delhi in Complaint Case No. CC/197/2004 titled as Shobha Rani Vs. National Insurance Co. Ltd. is hereby set-aside.

30. **The matter is remanded back to Ld District Forum to decide the matter fresh on merits.**
31. **Since, the complaint filed by the Appellant before Ld District Forum pertains to the year 2004, it is directed that the Ld District Forum will decide the matter as expeditiously as possible and preferably within a period of three months from the date of receipt of this order.**
32. However, in the facts and circumstances of the case, the parties shall bear their own costs.
33. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
34. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
35. Appeal be consigned to record room along with copy of this judgment.
36. Trial court record, if any, be sent back alongwith copy of this judgment.

**(BIMLA KUMARI)
MEMBER (FEMALE)**

Pronounced on 24.11.2025