

CR No. 1727 of 2015

Date of decision: 27.11.2015

Krishan Kumar Yadav

.....Petitioner

versus

Anil S.Rao

.....Respondent

Coram: Hon'ble Mr. Justice Arun Palli

Present: Mr. Manoj Kaushik, Advocate
for the petitioners.Mr. P.R.Yadav, Advocate
for the respondent.Arun Palli, J.(Oral)

Vide order being assailed dated 30.09.2014, rendered by Civil Judge(Junior Division) Gurgaon, application moved by the petitioner/defendant under Order 7 Rule 10 and 11 of the Code of Civil Procedure has since been dismissed. The reasons recorded by the trial court reads as thus:-

“After going through rival contentions of learned counsel for both the parties, I am considered view that as far as the question of order 2 Rule 2 is concerned, the same can only be decided after leading evidence from both the sides. Hence an issue regarding Order 2 Rule 2 can only be framed upon filing written statement by the defendant and therefore on the ground of Order 2 Rule 2, a plaint cannot be rejected. In this regard I stand rectified with my view laid down by Hon'ble High Court in the case titled as Suresh Kakkar & Another vs.

Mahender Nath Kakkar and others., Decide on 02.07.2008, 2009(1) LJR 48. As far as the question of jurisdiction is concerned the suit in hand is a suit simplicitor for recovery of money and section 20 of CPC proceeds that such type of suits can be instituted in the court within the local limits of whose jurisdiction defendant actually and voluntarily resides, or carries and business, or personally works for gain at the time of commencement of the suit. As far as the case in hand is concerned, the defendant has been residing within the local limits of the jurisdiction of this court. Hence finding no merits into the application moved on behalf of defendant, the same is hereby declined.”

Ex facie, the case set out by the petitioner was that even earlier, the respondent/plaintiff had filed different suits based on same cause of action qua the suit property and thus, he ought to have claimed the appropriate relief in the first suit itself and once he had failed to claim a particular relief that could be claimed in the earlier suit, the subsequent suit filed by the plaintiff would be barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure.

Apparently, such a plea could only be examined by the Court by framing an appropriate issue and in the wake of an evidence that the parties shall lead. And, of course, not in an application under Order 7 Rule 10 and 11 of the Code of Civil Procedure.

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

Petition being devoid of merit and is accordingly, dismissed.

27th November, 2015
Shivani Kaushik

[ARUN PALLI]
JUDGE