

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1738 of 2015.
Decided on:-11.03.2015.

Ms. Manju Kavar

.....Petitioner.

Versus

Mr. Prageet Sharma and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Sudhir Aggarwal, Advocate,
for the petitioner.

Dr. Bharat Bhushan Parsoon, J (Oral)

Defendant No.1 Ms. Manju Kavar, petitioner herein, has challenged order of the lower court of 05.01.2015, whereby her application under Order VII Rule 11 CPC read with Section 151 CPC for rejection of the plaint, being devoid of merits, was dismissed.

2. A suit between private parties initiated by plaintiff Prageet Sharma, respondent herein, for seeking a decree of declaration and permanent injunction is pending adjudication before the Court below. Main plea of the petitioner-defendant in this revision petition is that in view of Section 446 of the Companies Act, 1956, the suit against the company is not maintainable except by leave of the Tribunal, once a winding up order has been made or the Official Liquidator has been appointed as a provisional liquidator.

3. Perusal of the paper book as also impugned order leaves no manner of doubt that the suit is not against any company. Rather, the main contesting

parties are neither directors of any company nor as on date have any right, title or interest in the company which is under liquidation. Merely because the sale deed dated 30.12.2013 under challenge in the suit is by the said company, ipso facto, is no ground to hold that the suit is against the company.

4. At this stage Section 446 of the Companies Act, 1956, is reproduced as below:-

“446. Suits stayed on winding up order:-

(1) When a winding up order has made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company,

whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

When the suit is not against the company, the lower court was right in finding no merit in this plea of applicant-defendant No.1, who is a petitioner herein.

5. Ground of payment of advalorem court fee also taken in application under Order VII is devoid of any merit as the same has correctly been adverted to by the lower court.
6. Possession of the suit property has not been sought by the plaintiff. Even otherwise, this question has been left open by the lower court to be decided in the eventuality of claim of relief of possession being sought by the plaintiff.
7. Plea of Order II Rule 2 also is not of any merit because earlier suit is not shown to have been filed by the respondent-plaintiff.
8. The order is well written and also takes into account all the attending facts and circumstances and also shows legal maturity of the officer in understanding the facts and the law applicable on the subject.
9. The present revision petition is hence dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

March 11, 2015
prince rana