

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.2981 of 2014 (O&M)

Date of decision: 29.10.2015

Khurshid Ahmed

.....Petitioner

Versus

Sunil Kumar and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Gaur, Advocate,
for the petitioner.

Mr. Rakesh Dhiman, Advocate,
for respondent No.1.

Ritu Bahri, J.

Challenge in this petition is to the order dated 28.01.2014 (Annexure P-5) passed by the Civil Judge (Junior Division), Nuh, whereby application filed by defendant No.1-petitioner under Order 7 Rule 11 of the Code of Civil Procedure (for short "CPC") for rejection of the plaint, has been dismissed.

Sunil Kumar-plaintiff (respondent No.1 herein) filed a suit for declaration with consequential relief of permanent and mandatory injunction to the effect that order dated 15.11.2010 passed by the Collector, Nuh, cancelling the domicile certificate dated 31.05.2010 issued in favour of the plaintiff, was illegal, null and void. The said domicile certificate had been annexed by the plaintiff-respondent No.1 along with an application for allotment of petrol pump before the Hindustan Petroleum Corporation Ltd.

After filing of the suit, present petitioner had filed an application under

Order 1 Rule 10 CPC for impleading him as party to the suit on the ground that the Hindustan Petroleum Corporation Ltd. had sought applications for dealership of petrol pump. The plaintiff had been placed at serial No.1 and the petitioner had been placed at serial No.2. However, the Sarpanch of village had filed a complaint to the Deputy Commissioner stating therein that the domicile certificate presented by the plaintiff-respondent No.1 was prepared on the basis of forged documents, as the plaintiff was not residing in village Rangala. After conducting an enquiry, the said certificate had been cancelled by the Collector vide order dated 15.11.2010. Application under Order 1 Rule 10 CPC filed by the petitioner was allowed by the trial Court and revision against this order was dismissed by this Court. Newly added defendant No.4-petitioner filed his written statement (Annexure P-2). Thereafter, he filed an application (Annexure P-3) under Order 7 Rule 11 CPC for rejection of the plaint. Plaintiff-respondent No.1 filed his reply to the said application, copy thereof has been annexed with the petition as Annexure P-4. Trial Court, after hearing learned counsel for the parties, dismissed the said application vide order dated 28.01.2014 (Annexure P-5).

Rejection of the plaint was being sought on the ground that the plaintiff-respondent No.1 had an alternative remedy to challenge the order passed by the Collector dated 15.11.2010 in appeal/revision before the higher authorities and the course adopted by the plaintiff by straight away filing a suit was not correct remedy as it was neither an appeal nor revision before the superior authorities.

The impugned order dated 28.01.2014 can be examined in view of the provisions of Order 7 Rule 11 CPC, which reads as under:-

“11. **Rejection of plaint-** the plaint shall be rejected in the following cases:-

(a) where it does not disclose records of action;

- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to so correct the valuation with a time to be fixed by the court, fails to do so;
- (c) whether the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, all being required by the court to supply the requisite stamp paper in a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement with the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the court for the correction of the valuation of supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

Defendant No.4-petitioner has taken a plea that the suit in the present case was barred by law, as the plaintiff-respondent No.1 had efficacious alternative remedy to file an appeal/revision before the higher authorities. While dismissing the application, the trial Court has observed that cause of action has been fully disclosed by the plaintiff in para Nos. 12 to 15 of the plaint.

The facts stated in the written statement cannot be made basis for rejection of the plaint under Order 7 Rule 11 CPC. The Hon'ble Supreme Court in **Mayar (H.K.) Ltd. and others Vs. Owners and Parties, Vessel M.V. Fotrune Express and others**, 2006 (3) SCC 100, while examining the provisions of Order 7 Rule 11 CPC has held that merely on the basis of statement of facts made in the written statement, the trial Court cannot reject the plaint. In para No.11 of the aforesaid judgment, it was further observed as under:-

the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

A Co-ordinate Bench of this Court in **Rajesh Grover Vs. Smt. Rita Khurana and others**, 2005 (4) RCR (Civil) 721, was examining a case where an earlier suit was got dismissed as withdrawn without seeking any liberty from the Court to file a fresh suit on the same cause of action. During the pendency of the suit, a fresh suit for recovery of Rs.8,84,000/- was filed on 17.02.2000 based upon the agreement to sell dated 18.10.1996 in respect of the same property. It was pleaded that the defendants had undertaken to obtain income tax clearance certificate. Since the defendants broke the agreement by their own act and conduct and failed to obtain income tax clearance certificate, the plaintiffs became legally entitled to recover the amount of Rs.6,50,000/- with interest. In this suit, an application for rejection of the plaint was filed on the ground that the suit was barred under Order 2 Rule 2 CPC, as the earlier suit had been dismissed as withdrawn without seeking permission to file fresh one. The said application filed by the defendant was dismissed by the trial Court vide order dated 03.06.2005.

This order was affirmed in revision. In para No.10 of the judgment, it was observed as under:-

“10. The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise this power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it should be so done in exceptional circumstances. The truthfulness of narration of facts in the plaint or the written statement are not to be judged at the stage of rejection of plaint. That is a matter of evidence which the Court shall go into at the trial of the case. The weakness or the strength of the case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit.”

In the present case, even after cancellation of the domicile certificate of plaintiff, Akhtar Ali, Sarpanch of Gram Panchayat, Rangala, had filed a Criminal Complaint No.217 dated 19.08.2010 before the competent Court of jurisdiction, wherein the plaintiff had been summoned. This fact is evident from the written statement filed by defendant No.4-petitioner (Annexure P-2). The trial Court is required to determine the controversy involved in the suit on the basis of evidence to be led by the parties. Merely on the basis of facts mentioned in the written statement, the plaint could not be rejected under Order 7 Rule 11 CPC, as has been held in **Mayar (H.K.) Ltd.'s** case (supra).

In view of the above discussion, this Court is of the view that the application under Order 7 Rule 11 CPC has been rightly dismissed by the trial Court. No ground is made out to interfere in the impugned order.

Dismissed.

29.10.2015
ajp

(RITU BAHRI)
JUDGE