

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

(225)

CR No.3111 of 2014

Decided on: July 17, 2015.

M/s ACC Ltd

.... Petitioner

Versus

M/s Kamal Tyre and Building Material Suppliers

.... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Atul Gaur, Advocate, for
Mr. Sumeet Goel, Advocate,
for the petitioner.

None for the respondent.

M.M.S. BEDI, J (ORAL)

This is a revision petition against the order Annexure P-1 dated 06.03.2014, dismissing the application of the defendant-petitioner under Order 7 Rule 11 CPC for dismissal of the suit on the ground that the suit is not maintainable as per provisions of Section 20 of the Civil Procedure Code.

Further proceedings before the trial Court had been stayed vide order dated 05.05.2014. Notice was issued to the respondent. Respondent has opted not to appear despite service, as such, respondent is proceeded against ex parte.

The case is taken up for ex parte hearing against the plaintiff-respondent.

The plaintiff-respondent has filed a suit for recovery of Rs.28,50,541/- against the defendant-petitioner at Gurgaon. The plea of jurisdiction has been taken up by the defendant-petitioner in the written

statement. The adjudication regarding maintainability of the suit and jurisdiction of the Court being a question of fact has to be determined on the basis of the material produced on the record. It will be a mixed question of law and facts for determination of the trial Court. Dismissal of the application under Order 7 Rule 11 CPC will not in any manner prejudice the right of the defendant-petitioner.

This petition is dismissed. However, it is observed that anything said in the impugned order or this order will not in any manner prejudice the right of the defendant-petitioner to challenge the maintainability of the suit at Gurgaon in the light of the legal provisions including Section 20 CPC.

Parties are directed to appear before the trial Court on the next date of hearing.

(M.M.S. BEDI)
JUDGE

July 17, 2015
harsha