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

CR No.4151 of 2015

Date of decision: July 06, 2015

Renu Mohan

.....Petitioner

Versus

Vinod Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.B.S. Chahal, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 12.05.2015, whereby application moved by the petitioner under Order 7 Rule 11 of Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Learned counsel for the petitioner has submitted that respondent No.1 has filed suit for declaration on the basis of forged Will. In this regard, a criminal case had been registered against the respondent No.1 and during investigation, it was found that the Will put-forth by respondent No.1 was a forged document. Hence, the plaint was liable to be rejected.

In support of his arguments, learned counsel for the petitioner has placed reliance on **C.P. Subhash versus Inspector of Police Chennai and others** 2013 (5) Recent Apex Judgments (R.A.J.) 472, wherein, it was held as under:

“It was also, in our view, wrong for the High Court to hold that the respondents were not the makers of the documents or that the filing of a civil suit based on the same would not constitute an offence.”

Learned counsel for the petitioner has also placed reliance on ***Popat and Kotecha Property versus State Bank of India Staff Association***, 2005(4) R.C.R. (Civil) 334, wherein, it was held as under:

*“There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in **Bruce v. Odhams Press Ltd. (1936) 1 KB 697.***

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

In the present case, respondent No.1 has filed suit for declaration by placing reliance on a Will dated 06.03.1992. The case of the petitioner, on the other hand is that as per the report of the Sub-Registrar, Ludhiana, no such Will had been

executed in favour of respondent No.1 by Sh. G.D. Vaid. Although, a criminal case had been registered against respondent No.1, but at this stage, it would be not a ground to reject the plaint as the pleas taken up by the parties can only be established by leading evidence in this regard.

I have gone through the judgments relied upon by the learned counsel for the petitioner, but the same fail to advance the case of the petitioner as they are based on different facts.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 06, 2015
mahavir