

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4313 of 2012

Date of Decision.12.03.2015

Pawan Kumar

.....Petitioner

Versus

Upender Singh and others

.....Respondents

Present: Mr. Sudhanshu Makkar, Advocate
for the petitioner.

Mr. Hemant Bassi, Advocate
for respondent No.1.

Mr. Sharad Kumar Yadav, Advocate
for respondent Nos.2 and 3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. The suit is filed by the plaintiff to seek for a declaration that the order passed by the Canal Authorities under the Haryana Canal and Drainage Act, 1974 was null and void and not binding upon the plaintiff with the further prayer for decree for permanent injunction. The contest was taken by the defendant that the suit was barred under Section 25 of the Act which bars the Civil Court from exercising any jurisdiction touching upon the validity of the order passed by the authority constituted under the Act. It appears that the application was dismissed and the defendant filed an appeal before the District Court. The District Court quashed the plaint as not maintainable. This was brought in challenge by means of revision before this Court and this

Court had held that the Appellate Court was not competent to entertain the appeal and quashed the order and remitted the matter before the trial Court for consideration of the suit. Again the contention has been taken by the defendant that the suit was not maintainable and when the Court found that it was maintainable, the revision petition has been filed by him.

2. Before the arguments got underway, I asked the counsel appearing on behalf of the respondents as to how the suit was competent to be laid in a Civil Court in the light of express bar contained under Section 25 of the Haryana Canal and Drainage Act, which reads thus:-

“25. Notwithstanding anything contained in this Act or any other law for the time being in force, no civil court shall have jurisdiction to entertain or decide any question relating to matters falling under sections 17 to 24.”

3. The prayer in the suit, I have already explained, is verily the validity of an order passed by the authorities. The challenge to it is expressly barred before the Civil Court under Section 25. I will not let an argument to be taken by the counsel appearing on behalf of the respondents in the manner in which he does that in an earlier round of litigation, this Court had quashed the order passed by the District Judge and therefore, that must be taken as allowing for the continuation of the suit. If this Court had not heard the validity of the institution of the suit but was only considering the validity of an order passed by the District Judge exercising appellate jurisdiction against the order passed under Order 7 Rule 11 CPC, I would only take it to be restricted to a finding that an order passed under Order 7 Rule 11 CPC dismissing an application

was not capable of being challenged in an appeal. The validity of the suit itself could not be taken to be adjudicated in the earlier round of litigation.

4. If the plaintiff cannot maintain the suit for the relief which he has asked in the plaint and the suit is barred as referred to above, I hold that the plaint is liable to be quashed and the order passed by the appellate Court is required to be set aside. Needless to state that the plaintiff will be at liberty to challenge the order passed already by the Authorities constituted under the Act either by means of revision or by means of writ petition before this Court and not through a Court which is specifically barred under Section 25 of the Act. If there is a delay, he will be able to take the ground of pursuing the present suit as justification for not taking the action early.

5. The revision petition is allowed.

(K. KANNAN)
JUDGE

March 12, 2015
Pankaj*