

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

CR No.4949 of 2014
Date of Decision : 31.03.2015.

Swaran Singh

....Petitioner

Versus

Muslim Welfare Committee & Ors.

....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Swaich, Advocate
for the petitioner.

Mr. Madan Thakur, Advocate for
Mr. Neelofer Abida Parveen, Advocate
for respondent No.9.

SABINA, J

Petitioner has filed this petition challenging the order dated 07.03.2014 whereby application moved by the petitioners under Order 7 Rule 11 Code of Civil Procedure 1908 (CPC in short) for rejection of the plaint, was dismissed.

Learned counsel for the petitioner has submitted that although the application had been filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint on the ground of limitation and deficiency in Court Fee but petitioner could not urge before the trial court that the Civil Court has no jurisdiction to try the same. Learned counsel for the petitioner has further submitted that it was the case of the plaintiff that the property in dispute was Wakf Property. Since the suit property was alleged to be a Wakf Property by

the plaintiff, the plaintiff could only approach the tribunal constituted under the Wakf Act, 1995 for redressal of his grievance. In fact the suit filed by the plaintiff was not maintainable. In this regard learned counsel for the petitioner has placed reliance on decision of the Apex Court in ***Haryana Wakf Board Versus Mahesh Kumar 2014(1) RCR (Civil) 311.***

Respondent No.1 has filed suit for permanent injunction restraining the defendants from altering the nature of the suit land or dismantling the old construction. During the pendency of the suit, petitioner moved an application under Order 7 Rule 11 CPC. The case of the petitioner was that the plaintiff had failed to affix the advalorem court fee on the plaint and the plaintiff had no cause of action to file the suit and the suit was time barred. Application moved by the petitioner was dismissed vide the impugned order. A perusal of the impugned order as well as the application (Annexure-P3) reveals that the petitioner could not urge before the trial court that the Civil Court had no jurisdiction to try the suit. The objection now sought to be taken by the petitioner would go to the root of the matter.

In these circumstances, it would be just and expedient to quash the impugned order and direct the trial court to pass a fresh order on the application moved by the petitioner under Order 7 Rule 11 CPC.

Accordingly, this petition is allowed. Impugned order dated 07.03.2014 is set aside. Trial Court is directed to pass a fresh order on the application moved by the petitioner under Order 7 Rule 11 CPC.

(SABINA)
JUDGE

March 31, 2015
prince rana