

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.912 of 2015
Date of decision: 10.2.2015

Pohap Singh

....Petitioner

Versus

Pardeep

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashish Yadav, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 6.9.2014 passed by the Addl. Civil Judge (Senior Division), Rewari, whereby application filed by the petitioner-defendant for rejection of plaint was dismissed.

The reasoning given by the trial Court is that the evidence is to be appreciated whether the agreement dated 25.10.2012 in question was a loan transaction or agreement to sell. The same could only be done by leading cogent evidence and it could not be appreciated at this stage whether it was only a loan transaction.

Counsel for the petitioner has vehemently argued that as per agreement itself the terms were clear as the agreement was to be cancelled if the loan was repaid by the cut off date and it had also been similarly pleaded. It is thus submitted that the trial Court was in error in not rejecting the plaint as no cause of action arises.

After hearing counsel for the petitioner, this Court is of the opinion that for rejection of plaint only the plaint has to be taken into consideration and not the defence of the defendant and rejection is to be done in irresponsible and frivolous cases. Reference can also be made to observations of the Apex Court in **Popat & Kotecha Property Vs. State Bank of India Staff Association** (2005) 7 SCC 510 that only where the litigation is totally frivolous, the Court

would reject the plaint. The relevant observations read as under:-

“17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

In **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee** (2012)8 SCC 706.

The relevant observations read as under:-

“It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in [Raptakos Brett & Co. Ltd. vs. Ganesh Property](#) 1998(2) R.C.R. (Rent) 353 : 1998 (4) R.C.R. (Civil) 208 : (1998) 7 SCC 184 and [Mayar \(H.K.\) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others](#) (2006) 3 SCC 100.

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8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A

cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

A perusal of the paragraph 7 of the plaint would go on to show that even the plaintiff had averred that on the date fixed, the defendant did not turn up to get registered the sale deed and he had sent registered legal notice dated 26.10.2013 asking the defendant to get the sale deed registered which had led to filing of the suit. Thus, in the facts and circumstances of this case, it is a disputed question as to whether the agreement in question was a loan agreement or agreement to sell and the plaint discloses a cause of action. The trial Court was thus well within its jurisdiction to hold that it can only be discerned after leading evidence as to which of the party has gone to the office of the Sub Registrar to perform his part of contract and whether the defendant was ready and willing to return the loan amount to the plaintiff.

In such circumstances, this Court is of the opinion that order which has been passed by the trial Court is not liable to be interfered with by this Court. However, nothing observed herein shall be deemed to be an expression on merits of the case since it is only for the purpose of deciding the present revision petition.

Accordingly, the present revision petition is dismissed.

10.2.2015
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(G.S.SANDHAWALIA)
JUDGE