

222 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Revision No. 3100 of 2014 (O&M)
Date of decision : 29.11.2016

Surender alias Sunder and others Petitioners

VERSUS

Narender and others Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatin Hans, Advocate for the petitioners.

Mr.Ajit Sihag, Advocate for respondent No.1.

AMIT RAWAL, J.(Oral)

CM No. 8195-CII of 2014

This is an application for condonation of delay of 155 days in
filing the present revision petition.

For the reasons recorded, the delay of 155 days in filing the
present revision petition stands condoned.

CM is allowed.

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The petitioner-defendants are aggrieved of the impugned order
whereby application seeking rejection of the plaint under Order 7 Rule 11
CPC has been dismissed.

Mr.Jatin Hans, Advocate, learned counsel appearing on behalf
of the petitioners submits that the challenge in the suit is to the order dated

18.10.2011 passed by Sh.O.P.Malik, Sub Divisional Canal Officer, Bawani Khera, Bawani Khera Water Works Division and order dated 11.01.2012 passed by Sh.O.P.Chawla, Divisional Canal Officer, Water Service Division, Bhiwani with a consequential prayer for restoration of the water course. He submits that such orders are liable to be assailed in a revision before the Superintending Canal Officer as per provisions of Section 20 of The Haryana Canal and Drainage Act, 1974.

Per contra learned counsel appearing for respondent No.1 submits that these orders are perfectly legal and jurisdiction of the Civil Court can always be invoked de hors of the fact that there is an alternative remedy.

I have heard learned counsel for the parties and perused the paper book.

Provisions of Section 20 of the Haryana Canal and Drainage Act, 1974, reads as follows:-

“20. Appeal and Revision.- (1) An appeal against the decision of the Divisional Canal Officer under sub-section (2) of Section 18 shall lie to the Superintending Canal Officer within thirty days of the publication of the scheme under Section 19.

(2) An appeal shall lie against the decision of the Superintending Canal Officer passed under sub-section (1) in regard to any of the matters covered under clauses (a), (b) and © of sub-section (1) of section 17m, to the Chief Canal Officer within thirty days of the date of such decision.

(3) The Chief Canal Officer or the Superintending Canal Officer may suo motu, call for the record of any case, pending before, or disposed of by any subordinate authority, for the purpose of satisfying himself as to the legality or propriety of any proceedings or of any order made therein and may pass

such order in relation thereto as he may think fit:

Provided that no such order shall be made without affording the person affected an opportunity of being heard.”

The prayer sought in this suit reads as under:-

“Suit for declaration to the effect that the order dated 18.10.2011 passed by Shri O.P.Malik, Sub Divisional Canal Officer Bawani Khera, Bwani Khera Water Service Division and order dated 11.01.2012 passed by Shri O.P.Chawla, Divisional Canal Officer, Water Service Division, Bhiwani regarding the restoration of water course is totally wrong, illegal against law and facts, without jurisdiction, null and void not binding upon the rights of the plaintiff and liable to be set aside on the basis of above said order defendant No. 3 to 5 have no right to dig any water course from the Khasra NO. 71//23/1 situated at Jatu Lahuri Tehsil Bwai Kher District Bhiwani.

And further suit for mandatory injunction to the effect that on the basis of wrong orders dated 18.10.2011 and 11.01.2011 the respondents be restrained to restore any water course from Khasra No.71//23/1 situated at Jatu Lahuri, Tehsil Bawani Khera, District Bhiwani on the basis of oral as well as documentary evidence.”

In essence the pith and substance of the suit filed is challenge to the orders indicated above and the remedy lies as per provisions of Section 20 of the Haryana Canal and Drainage Act, 1974 within a period of thirty days from the date of publication of the scheme under Section 19.

Accordingly the impugned order dismissing the application under Order 7 Rule 11 CPC is hereby set aside. The plaint is ordered to be returned. Liberty is granted to the respondent-plaintiffs to avail alternative remedy and seek condonation as per provisions of Section 14 of the

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Limitation Act.

Revision stands allowed.

(AMIT RAWAL)
JUDGE

November 29, 2016

Sunita

Whether speaking / reasonedYes / No

Whether ReportableYes / No