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

CR-4606-2016

Date of decision : 23.07.2016

Bhushan Kumar Sharma

... Petitioner

Versus

Ishwar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

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

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.1 is aggrieved of the impugned order dated 03.05.2016, whereby an application under Order 1 Rule 10 for deleting his name on the array of memo of parties in a suit seeking damages/compensation on account of malicious prosecution, has been dismissed.

Mr. Aayush Gupta, learned counsel appearing on behalf of the petitioner-defendant No.1 submits that the role of the petitioner was totally in consonance with the nature of the duties assigned to him at the relevant point of time. He was the complainant in the FIR registered against the respondent-plaintiff on account of theft of electricity. The petitioner-defendant No.1 is already retired and is 70 years' old. The act of the

employee of the Electricity Department is protected as per the provisions of Section 168 of the Electricity Act, 2003, therefore, the suit *ex facie* against the petitioner-defendant No.1 would not maintainable and the application, aforementioned, was moved, but the trial Court has erroneously and perversely declined the same, thus, urges this Court for setting aside the impugned order under challenge.

I have heard the learned counsel for the petitioner-defendant No.1 and appraised the paper book and of the view that it is matter of record that till date no written statement has been filed, though the suit was instituted in the year 2011. The issue being pre-mature to observe whether the suit against the petitioner-defendant No.1 seeking relief as noticed above, would be maintainable or not? The petitioner is at liberty to raise all possible pleas, but not in the manner and mode as has been adopted. For the purpose of attracting provisions of Order 7 Rule 11 CPC only, averments made in the plaint have to be seen.

For the foregoing reasons, I do not intend to differ with the findings rendered by the trial Court which are based upon the appreciation of oral and documentary evidence and accordingly, the revision petition is dismissed and the impugned order dated 03.05.2016 is upheld.

Revision petition stands dismissed.

23.07.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No