

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

-.-

CR 5235 of 2015
Date of decision : 27.08.2016

HDFC Bank Limited Patiala*Petitioner*

versus

Nawal Kishore and others*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R S Bhatia, Advocate
for the petitioner

Mr. Subhash Aggarwal, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

The present petition has been directed against order dated 07.05.2015 (Annexure P1) passed by the Civil Judge (Junior Division) Guhla whereby the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (in short, 'CPC') for rejection of the plaint, has been kept pending, to be decided on the basis of evidence to be adduced by the parties on issue '*whether the civil Court has no jurisdiction in the present case? OPA*'.

It is argued with vehemence that as the application under Order 7 Rule 11 CPC is required to be decided by the trial Court only on the basis of averments set up in the plaint, disregarding any plea raised in defence or otherwise, the trial Court has committed a gross error rather illegality by

framing an issue and calling upon the petitioner to adduce evidence. It is prayed that the impugned order may be set aside and the trial Court may be directed to dispose of the application under Order 7 Rule 11 CPC, in accordance with law.

Counsel for respondent No. 1 has submitted that as the petitioner-Bank has illegally put locks on business premises of respondent No. 1, the petitioner may be directed to remove locks pending decision of the application under Order 7 Rule 11 CPC.

I have heard counsel for the parties and perused the paper book particularly the order impugned.

The petitioner has filed the instant application seeking rejection of the plaint by raising a plea that jurisdiction of the civil Court to entertain and try the suit is barred under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. As has been rightly argued by counsel for the petitioner, an application under Order 7 Rule 11 CPC is required to be decided by the trial Court on the basis of averments set up in the plaint and no evidence is required to be adduced by the parties for disposal of the application. Under these circumstances, the impugned order cannot be allowed to sustain and accordingly set aside. The trial Court is directed to dispose of the application under Order 7 Rule 11 CPC after hearing both the parties, in accordance with law, without calling upon either of the parties to adduce evidence. The trial Court would put its best efforts to dispose of the application within a period of one month from the next date fixed in the proceedings.

So far as the plea of respondent No. 1 that the petitioner may be

directed to remove locks, the petitioner is left at liberty to take recourse to appropriate proceedings, in accordance with law, for seeking such a relief.

Disposed of accordingly.

(Rekha Mittal)
Judge

27.08.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No