

Civil Revision No.5357 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5357 of 2016
Date of Decision: August 22, 2016

Rakhi Dogra

...Petitioner

Versus

Silky Dogra & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Harsh Aggarwal, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the impugned order, whereby application under Order 7 Rule 11 CPC seeking rejection of the plaint for non-compliance of the provisions of Section 67 of the Haryana Housing Board Act, 1971 as applicable to the Chandigarh Housing Board, had been disposed of by framing the issue placing the onus upon the defendants.

Mr.Harsh Aggarwal, learned counsel for the petitioner-defendant submits that once the suit apparently, from the pleadings, is found to be not maintainable, it would be total futile exercise in going

ahead with the proceedings as it is a mixed question of law. At the best, the Court could have treated the same as preliminary requirement if not agreeing with the rejection of the plaint.

I have heard the learned counsel for the petitioner and appraised the paper book.

The cardinal principle of law for allowing application under Order 7 Rule 11 CPC is to read the averments in the plaint and not the defence. If the plaint does not make out a case, only in such circumstances, the Court would come to the rescue of the defendants. Once the application has been disposed of in the manner, indicated above, I am of the view that framing of the issue would be essential requirement of law as it is a mixed question of law, but it can be treated as a preliminary issue.

Accordingly, the present revision petition is disposed of with a direction to the trial Court to treat the issue of non-service of notice as preliminary issue and decide the same by affording 2-2 opportunities to the parties.

August 22, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No