

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

CR No.5713 of 2016(O&M)

Decided on. 15.11.2016.

Sukhraj Singh

.....Petitioner

Versus

Deesha Mahi

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vikas Bali, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 28.07.2016 passed by the learned Civil Judge (Jr. Division), Jalandhar, whereby the application moved by the petitioner-defendant under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of the plaint has been dismissed and application filed by the respondent-plaintiff under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint has been allowed.

2. I have heard Mr. Vikas Bali, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

3. Learned counsel for the petitioner contended that the petitioner-defendant has filed the application under Order 7 rule 11 CPC for rejection of the plaint on the ground that the plaint did not disclose any cause of action and the plaintiff-respondent has also concealed the facts regarding the previous litigation. He contended that in order to meet out the pleas raised by the petitioner-defendant, the plaintiff moved an application for amendment of the plaint to

incorporate the para regarding cause of action. He contended that such amendment after filing of the application under Order 7 Rule 11 CPC should not have been allowed. The original plaint did not disclose any cause of action. The plaintiff has also concealed the facts regarding the previous litigation. So, the plaint was liable to be rejected.

4. I have duly considered the aforesaid contentions.

5. In the instant case, respondent-plaintiff has filed the suit for possession with respect to the residential house bearing no. 819 situated at Baba Isher Singh Nagar, village Dhina, Tehsil and District Jalandhar seeking the eviction of the petitioner-respondent her tenant on various grounds mentioned in the plaint. It was also categorically mentioned in para no. 5 of the plaint that before filing the suit, the plaintiff issued a registered notice dated 17.04.2015 to the defendant to handover the vacant possession of the house in question and to pay the arrears of the rent along with interest within 15 days from the date of receipt of the notice. But, the defendant even after receiving the notice in question kept the matter pending. Ultimately, a day before yesterday, he refused to comply with the direction given in the notice, hence the cause of action to file the suit. Thus, in para no. 5 of the plaint, the plaintiff-respondent has mentioned the facts constituting the cause of action to file the suit.

6. It is settled principle of law that in order to decide the application under Order 7 Rule 11 CPC, only the contents of the plaint are to be taken into consideration. The plea raised by the defendant in the written statement or in the application under Order 7 Rule 11 CPC cannot be made the basis to reject the plaint. It is further the settled

principle of law that the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the power under Order 7 Rule 11 CPC. The Hon'ble Apex Court in case **Mayar (H.K.) Ltd. and others vs. Owners and Parties, Vessel M.V.Fortune Express and Others 2006 S.C 1828** has laid down as under:

“The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.”

Thus, as per the aforesaid ratio of law the cause of action is a bundle of facts which are required to be proved for obtaining relief, the material facts are required to be pleaded, but not the evidence. Essentially, the court has to take into consideration the averments in the plaint in its entirety and its contents thereof to ascertain some cause of action which requires the determination by the court, then there can be no ground for rejection of plaint.

7. In para no. 4 of the plaint, the plaintiff-respondent has categorically mentioned about the previous litigation i.e. the rent petition filed by her which was subsequently withdrawn as the demised premises were situated beyond the municipal limits of Jalandhar.

Moreover, it is a question of evidence i.e. the copy of the documents relating to the previous litigation. Thus, as to whether the plaintiff-respondent has concealed the facts regarding the previous between the parties cannot be adjudicated upon at the preliminary stage of deciding the application under Order 7 Rule 11 CPC. Thus, both the grounds taken in the application under Order 7 Rule 11 CPC moved by the petitioner were not attracted.

8. By the impugned order itself, the learned trial Court has allowed the application moved by the respondent for the amendment of the plaint to incorporate para no. 6-A in the plaint with respect to the cause of action and to mention the facts in para no. 4 with respect to the previous litigation between the parties. As per the provisions of Order 6 Rule 17 CPC, the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The amendment sought by the plaintiff-respondent in the plaint is not going to change the nature of the suit and cause any prejudice to the rights of the petitioner-defendant. The amendment sought by the plaintiff-respondent is just to incorporate more facts in addition to the facts already pleaded to clarify the position with respect to the cause of action and previous litigation, which was necessary to determine the real questions in controversy between the parties. Thus, it cannot be stated that the application moved by the plaintiff for amendment of the plaint has been allowed by the learned trial Court just to defeat the application moved by him

under Order 7 Rule 11 CPC.

9. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

10. Thus, the present revision petition having no merits, is hereby dismissed.

November 15, 2016
S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No