

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

CR No.7676 of 2016O&M)

Decided on. 16.11.2016.

Er. Harshvardhan Bansal

.....Petitioner

Versus

Paramjit Singh Grewal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Pushpinder Kaushal Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 18.07.2016, passed by the learned Additional District Judge, S.A.S. Nagar Mohali, whereby the appeal preferred by respondent no.1 against the order dated 19.07.2014 passed by the learned Civil Judge (Jr. Division), Kharar has been allowed.

2. Respondent no.1 filed the suit for permanent injunction on 03.03.2010 restraining defendant-respondents no.2 and 3 from forcibly dispossessing the plaintiff-respondent no.1 and his family members from House No.9, Ground Floor Surya Enclave Landran road within municipal limits of Kharar. Vide order dated 04.03.2010, the Court of learned Civil Judge (Jr. Division), Kharar granted an ad interim stay in favour of the plaintiff-respondent no.1. The present petitioner was not a party to the said suit. However, the plaintiff-respondent no.1 moved an application on 18.03.2010 under Order 39 Rule 2-A of the Code of Civil Procedure, 1908 (for short CPC). By impleading the petitioner as a party alleging therein for taking action against the petitioner and

other defendants and for sending them to civil imprisonment on the pretext that they have violated the injunction order dated 04.03.2010. On 18.04.2014, the petitioner moved an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the proceedings under Order 39 Rule 2-A CPC on the ground that the said petition has been rendered infructuous and was having no cause of action since the main suit filed by respondent no.1 has already been dismissed as withdrawn on 05.03.2013. The said application filed by the petitioner was allowed by the learned trial Court vide order dated 19.07.2014 and the petition filed by respondent no.1 under Order 39 Rule 2-A CPC was dismissed as the main suit has already been dismissed as withdrawn vide order dated 05.03.2013 and the proceedings under Order 39 Rule 2-A CPC could not be continued.

3. Aggrieved with the aforesaid order, respondent no.1 preferred an appeal before the learned Additional District Judge, Mohali. The said appeal was allowed by the learned Additional District Judge vide impugned order dated 19.07.2014. Hence this revision.

4. I have heard Mr. Pushpinder Kaushal, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

5. Initiating the arguments, learned counsel for the petitioner contended that the learned Additional District Judge has illegally set aside the well reasoned order passed by the learned trial Court. He contended that it is an admitted fact that the main suit was already been dismissed as withdrawn vide order dated 05.03.2013. After that the cause of action to continue with the proceedings under Order 39 Rule

2-A CPC does not survive. Thus, he contended that the continuation of the proceedings thereafter was only an abuse of process of law. Moreover, the petitioner was not a party to the main suit wherein the injunction order was passed. He contended that the application moved by the petitioner under Order 7 Rule 11 read with Section 151 CPC was perfectly maintainable as there was no cause of action available to the respondent no.1 to continue with the petition after the withdrawal of the main suit. The learned trial Court has rightly exercised the inherent powers under Section 151 CPC. Thus, he contended that the impugned order passed by the learned First Appellate Court is illegal.

6. I have duly considered the aforesaid contentions.

7. The facts are not disputed that respondent no.1 has filed the suit on 03.03.2010 against defendant-respondents no. 2. and 3. In the said suit, the injunction order was passed by the learned trial Court on 04.03.2010 whereby the parties were ordered to maintain *status quo* with regard to the possession of the suit property. Respondent no.1 filed the petition under Order 39 Rule 2-A CPC by impleading the present petitioner as a party on 18.03.2010 alleging therein that respondents-defendants no.2 and 3 in connivance with the present petitioner has stopped the water supply to the house of the respondent no.1 by disconnecting it from the water tank and thereby they have violated the injunction order. This fact is also admitted that the main suit was dismissed as withdrawn vide order dated 05.03.2013. Copy of the order is Annexure P-7, which shows that the defendants have suffered a statement that they will not dispossess the plaintiff forcibly from the house in dispute. On the basis of that statement, the plaintiff

has made the statement to withdraw the suit.

8. The main plea taken by the petitioner in the application moved by him under Order 7 Rule 11 CPC for rejection of the proceedings under Order 39 Rule 2-A CPC is that with the withdrawal of the main suit, the cause of action does not survive. Order 7 Rule 11 CPC reads as under:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. It is the settled principle of law that in order to determine the applicability of the provisions of Order 7 Rule 11 CPC, the Court is required to consider the contents of the plaint-petition. The plaint can be rejected under Order 7 Rule 11 CPC (a) CPC, where the plaint-petition does not disclose a cause of action. It is not the case of the petitioner that the petition filed by respondent no.1 under Order 39 Rule 2-A CPC did not disclose any cause of action, rather it is pleaded that with the withdrawal of the suit, the cause of action no more

survives. So, the plea raised by the petitioner is not covered under any clause of order 7 Rule 11 CPC for rejection of the proceedings.

10. It is further settled principle of law that when there are specific provisions with respect to any matter, the general provisions of Section 151 CPC shall not be applicable. So, the petitioner cannot plead that by exercising the inherent powers under Section 151 CPC, the petition filed by respondent no.1 under Order 39 Rule 2-A CPC should have been dismissed.

11. Learned counsel for the petitioner could not point out any infirmity in the impugned order passed by the learned Additional District Judge concluding therein that with the subsequent withdrawal of the suit, the proceedings under Order 39 Rule 2-A CPC for violating the injunction order cannot be brought to an abrupt end.

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

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

November 16, 2016
S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No