

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

CR No.7794 of 2016(O&M)

Date of decision:21.11.2016

Sukhwinder Singh

....Petitioner

VERSUS

Surinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 12.09.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Phillaur whereby application filed by the respondent under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') has been allowed and the application filed under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree has been dismissed.

Counsel for the petitioner has submitted that the provisions of Order 7 Rule 11 CPC applies only for rejection of a plaint and not to reject an application. It is further submitted that even if the application has not been presented through an authorized person, the Court below had the discretion to permit the applicant to cure the defect i.e. irregularity in presentation of the application. For this purpose, he has referred to judgment of Full Bench of the Allahabad High Court **Wali Mohammad Khan Vs. Ishak Ali Khan and others, AIR 1931 (Allahabad) 507.**

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Perusal of the impugned order would indicate that though the order makes reference to Order 7 Rule 11 CPC as the application was filed under Order 7 Rule 11 read with Section 151 CPC but the Court has also invoked the provisions of Section 151 CPC for rejection of the application on the ground that the same was filed by a person who is not authorized by the Special Power of Attorney dated 03.09.2012/05.09.2012, to file such an application.

The judgment relied upon by counsel for the petitioner in Wali Mohammad Khan's case (supra), says that the Court receiving a plaint which has not been properly presented would have jurisdiction to dismiss it and pass orders on it. It would not be acting without jurisdiction if it did so. We do not mean to imply that a plaintiff has the right to get his plaint presented by a man in the street. If the person presenting it was not properly authorized, the presentation would be irregular. The Court would then have the discretion to allow the irregularity to be cured or not. If the plaintiff has acted in good faith and without gross negligence, and it is fair and just to allow the defect to be cured, the Court would undoubtedly do so.

A reading of the observations recorded in para 9 of the judgment would make it evident that if the Court dismisses the plaint which is not properly presented, it does not amount to any illegality or exceeding jurisdiction by the Court. Once it is so, even if the impugned order is improper, no intervention in exercise of jurisdiction under Article 227 of the Constitution of India is warranted. I would hasten to add that after filing of the application by the respondent, the petitioner did not bother to cure the defect or place on record a Power of Attorney rectifying the earlier error by giving proper power to the attorney.

On a pointed query raised by the Court, counsel for the petitioner has submitted that even if the application has been dismissed for want of proper authorization, the petitioner can still file another application either personally or through proper agent. That being so, there is no question of the petitioner’s suffering an irreparable loss or injury, in case the impugned order is not set aside.

For the foregoing reasons, the petition is disposed of.

However, the petitioner is at liberty to take recourse to appropriate proceedings in accordance with law, for redressal of his grievance.

NOVEMBER 21, 2016
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no