

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

Civil Rev. No.1105 of 2017
Date of Decision: 15.02.2017

Alpha Corp. Dev. Pvt. Ltd.Petitioner

Versus

Alpha Residents Welfare Assoc.
(Regd.), Karnal and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Alok Jain, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 31.01.2017 (Annexure P-1) passed by Civil Judge (Junior Division), Karnal, whereby, the application filed under Order 7 Rule 11 CPC for rejection of plaint on multifarious grounds has been dismissed.

Briefly, the facts of the case are that plaintiff-respondents filed a suit for declaration, rendition of accounts, mandatory injunction and permanent injunction. Written statement to the plaint was filed. During pendency of the suit, the petitioner filed an application under Order 7 Rule 11 CPC for rejection of plaint. Reply to that application was also filed by the plaintiff-respondents. The application of the petitioner was dismissed vide impugned order dated 31.01.2017, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that totally a non-speaking order has been passed and the contentions mentioned in the application have not been considered. It was specifically mentioned in the application that the Courts at Karnal did not have territorial jurisdiction in view of specific clause in agreement and conveyance deed, besides an Arbitration Clause. As per terms and conditions of the agreement, the Civil Court was not having jurisdiction but the same has not been considered. Learned counsel also submits that the suit was bad for misjoinder of many causes of action and no cause of action to claim any of the reliefs prayed for in the suit was there. The plaintiff-respondents have failed to comply with the mandatory provisions of Order 7 Rule 3 CPC read with High Court Rules and Orders and copy of the revenue record for showing the description of the suit property was not placed on record. At the end, learned counsel for the petitioner submits that the relevant judgments were relied upon but neither the arguments nor the judgments relied upon by the petitioner were considered.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Filing of suit by the plaintiff-respondents and thereafter, filing of application by the petitioner under Order 7 Rule 11 CPC for rejection of plaint, are not disputed. Plaintiffs have raised multifarious grievances and claiming reliefs against the defendants i.e for declaration, for rendition of accounts, for mandatory injunction and for permanent injunction.

As per provisions of Order 2 Rule 3 of CPC, the plaint cannot proceed by clubbing several causes against same defendants jointly

interested and by raising different cause of action. As per Order 2 of the Code of Civil Procedure, each grievance is required to be tried by way of separate suit. As per terms and conditions of the agreement, there was an Arbitration Clause and the same has not been taken into consideration. Under Clauses 22 and 23 of the 'Plot Buyers Agreement', there was an arbitration clause and the matter was to be referred to Arbitration but the suit was filed.

On perusal of impugned order, it appears that the application moved by the petitioner has been dismissed on the ground that the matter, in dispute, can be resolved only after the evidence is led from both the sides. The relevant portion of the order is reproduced as under :-

“ 17. After hearing the rival contentions, this Court is of the considered view that present plaint is not barred by Section 15 of the Act as in the present case, the dispute is primarily between purchaser and colonizer, whereas, Section 15 puts an embargo on the jurisdiction of Civil Court only for resolution of the questions and rules framed thereunder. Although certain questions e.g non payment of profits and fees to defendant No.12 fall in a different arena i.e between defendants No.1 to 10 and defendant No.12 but being residents of the township, the suit of the plaintiffs cannot be termed as without any cause of action. Pertinent, it is to mention that there is a huge difference between non disclosure of cause of action and proof of it. Only in the former case, plaint is liable to be rejected. In the given facts and circumstances, the matter in hand, can be resolved only after evidence is led from both the sides. Even otherwise, under Section 9 of CPC, the term used is suits of civil nature which is not expressly or

impliedly barred can be entertained by a Civil Court. Undoubtedly by using the phrase “civil nature” the jurisdiction is widened only to be constricted by imposing express or implied bar by any law whether in the CPC itself or outside it.”

On perusal of said order, it appears that nowhere, it has been mentioned as to how the averments made in the application have been considered. Neither any finding has been recorded nor the contentions raised in the application have been mentioned.

Order 7 Rule 11 of the Code is reproduced as under :-

“Order 7 Rule 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 to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite

stamp-paper, 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.”

Rule 11 Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. It can be raised at any stage by raising objection. The word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. However, the rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

In ***Saleem Bhai and others vs State of Maharashtra and others 2003(1) SCC 557***, it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which are required to be looked into for deciding an application are the averments in the plaint. The trial Court can exercise the power at any stage of the suit i.e after filing of the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.

Similarly, in another judgment of Hon'ble the Apex Court in case ***I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and others 1998(1) RCR (Civil) 391 (SC)***, it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been started with a view to get out of Order 7 Rule 11 of the Code.

This power should be exercised by the Court for taking care to

see the grounds mentioned therein is fulfilled or not. The whole plaint has to be read. Any part of the plaint cannot be rejected if no cause of action is disclosed and plaint as a whole is to be rejected. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. The Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is *prima facie* of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

The Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

The power under Order 7, Rule 11 speaks of rejection of plaint under four circumstances, the first one being non-disclosure of cause of action, and the last one is on a bar of suit under any provision of law. The other two grounds on which a plaint can be rejected relate to valuation and non-payment of Court fees, which are not matters concerned. For an order under Order 7, Rule 11, Civil Procedure Code, it is the plaint and the plaint alone which is to be considered and in case, if the plaint made out a case indicating a cause of action then the falsity of the claim would be a matter to be determined at the trial.

While deciding application filed by the defendant for rejection

of suit under Order 7 Rule 11, the trial Court is required to reach at the conclusion. By considering the conditions under Order 7 Rule 11, the necessary order is required to be passed.

In the present case, only the averments made in the application have been mentioned but while passing the impugned order, those contentions have not been recorded as no finding has been given while passing the impugned order. The order is totally non-speaking, vague and does not reflect any finding recorded by the trial Court.

Accordingly, the present revision petition is allowed and the impugned order of rejection of application is set aside. The matter is remitted back to the trial Court for reconsideration as per discussions made above and by considering the provisions of Order 7 Rule 11. However, it is made clear that the trial Court is not to be influenced by the observations made in the earlier order, which has been challenged in the present petition.

15.02.2017
gupreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes