

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

C.R. No.1317 of 2017 (O&M)

Date of Decision: 22.02.2017

Narain Singh (deceased) through his LRsPetitioners

Versus

Tej Kaur (deceased) through her LRs and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Jain, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

This revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 10.01.2017 passed by learned Additional District Judge, Ambala.

The petitioners-plaintiffs filed a suit for declaration and injunction against respondents-defendants. During pendency of the suit, respondent-defendant No.2 filed an application under Order 7 Rule 11 CPC for rejection of the plaint which was allowed vide order dated 11.01.2016.

Aggrieved by said order passed by the trial Court, the petitioners filed an appeal before the learned Additional District Judge, which was dismissed being not maintainable vide order dated 10.01.2017.

Now the legal representatives of deceased petitioner-Narain Singh, has approached this Court by way of filing the present revision petition to challenge the impugned order dated 10.01.2017 (Annexure P-1) passed by learned Additional District Judge, Ambala by raising various grounds.

Learned counsel for the petitioners submits that the order

passed by learned Additional District Judge, Ambala is contrary to the facts and law. While passing impugned order by learned Additional District Judge, Ambala, it has been mentioned that under Order 7 Rule 11, no appeal lies against the order of rejection of application, which was allowed by the trial Court. It is also mentioned in the impugned order that revision would be maintainable before the High Court. Learned counsel also submits that by rejecting the plaint, the rights of the parties are affected and it is deemed to be decree and the same is appealable.

Learned counsel for the petitioners has also relied upon the judgment of this Court in case ***Vineet Handa vs M/s OZO Media Estate Limited and others 2011(1) Civil Court Cases 98.***

The facts relating to filing of suit and moving an application by respondent-defendant No.2 under Order 7 Rule 11 of CPC and allowing the same by the trial Court are not disputed. The appeal filed by the petitioners against the order of trial Court dated 11.01.2016 was dismissed on the ground that the appeal is not maintainable and only the revision is maintainable. The order of rejection of plaint passed by the trial Court is a decree within the meaning of Section 2(2) of the Code.

As per provisions of Order 43 Rule 1 of CPC, the remedy is to file appeal. The appeal against the said order is maintainable before the District Judge. The decree has been defined under Section 2(2) of the Code of Civil Procedure, 1908 (here-in-after referred to as the 'Code') which is as under :-

“ Code of Civil Procedure, 1908

2. Definition – In this Act, unless there is anything repugnant in the subject or context, -

(1) xx xx

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation – A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.”

Order 7 Rule 10 of the Code of Civil Procedure, 1908

“10. Return of plaint – (1) Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation: For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint – On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

Before proceeding further, some of the provisions of the Code, which are necessary for resolving the controversy, in hand, are reproduced as under :-

Order 7 Rule 11 of the Code of Civil Procedure, 1908

“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 required 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.”

Q. No.1 Whether the plaint can be ordered to be rejected on a ground not enumerated in Order 7 Rule 11 of the Civil Procedure Code, 1908 ?”

Similar issue was there in case **Thakur Harihar Bakhsh Singh vs Thakur Jagannath Singh and another AIR 1924 Oudh 413**, wherein, it was held that the grounds of rejection of plaint mentioned in Order 7, Rule 11 of the Code of Civil Procedure, are not exhaustive. It does not limit the

powers of the Court under section 151 of the Code. The relevant portion of the said judgment is reproduced as under :-

*“ On behalf of the appellant, it is contended that the only grounds on which a court is authorised to reject a plaint are those given in Order 7, Rule 11 of the Code of Civil Procedure and that the Subordinate Judge had no jurisdiction to reject this plaint on the grounds taken by him. With this contention we are not disposed to agree. The instances given in the rule referred to cannot be regarded as exhaustive or as limiting the powers of the court under Section 151 of the same Code. We concur in the view taken by the Madras High Court in **Lakshmanam Chetty v. Lakshmanam Chettiar 1914(1) L.W. 875** that a court has jurisdiction in a proper case to dismiss a suit filed by the next friend of a minor, on the ground that it is not in the interests of the minor that the suit should be allowed to go. The cases quoted in that ruling from “Simpson on the Law of Infants” show that this is also the law in England.”*

Similarly in another case titled as **Radakishen v. Wali Mohammed, AIR 1956 Hyderabad 133**, it has been held by a Division Bench that the provisions of Order 7 Rule 11 of the Code cannot be regarded as exhaustive of all the cases in which a Court can reject a plaint or as limiting the inherent powers of the Court in respect thereof. The relevant portion of said judgment is reproduced as under :-

“ We do not altogether agree with the second contention of the learned Advocate that the plaint could not be rejected under O. 7 R.11, CPC. No doubt O.7 R.11 gives instances of the rejection of the plaint in cases of non-disclosure of causes of action, undervaluation of the relief claimed, insufficiency of

court-fees or claim being barred by any law; the instances given, in our opinion, cannot be regard as exhaustive of all the cases in which a court can reject a plaint or as limiting the inherent powers of the Court in respect thereof.”

In ***Badri Nath L. Tirath Ram & Anr. v. State of Pepsu & Ors., AIR 1957 Pepsu 14*** reliance was placed upon ***Thakur Harihar Bakhsh Singh's*** case (supra) to hold that the rejection of plaint as mentioned in sub-section (2) of Section 2 of the Code is not confined to rejection of plaint under Order 7 Rule 11 of the Code. However, it was held that even if technically it is not considered rejection of plaint but on dismissal of suit, it will amount to decree and appeal would be competent.

As per provisions of Order 43 Rule 1(a) of the Code, the only remedy is to challenge the order by way of appeal as the rights of the parties are affected. Such order returning the plaint does not adjudicate any of the rights of the parties. It leaves the parties to seek adjudication on the issue arising in the suit before the competent Court of law. Therefore, an order rejecting the plaint could be passed by the Court under its inherent jurisdiction and is appealable by virtue of Order 43 Rule 1(a) of the Code.

In view of facts and law position as discussed above, the petitioner was having remedy of appeal and he filed the appeal also but the same was dismissed with the observation that the petitioner was having remedy of revision before this Court, meaning thereby, the Additional District Judge, Ambala has not properly appreciated the provisions of Order 7 Rule 11 as well as Order 43 Rule 1(a) of the Code. Even a wrong observation has been made in the order by mentioning that “learned counsel for the appellant has failed to show any provisions under the CPC whereby

an appeal of rejection of application under Order 7 Rule 11 CPC would lie and perusal of Order 43 Rule 1 CPC shows that no appeal lies from the order of rejection of application under Order 7 Rule 11 CPC and a revision would lie before the Hon'ble High Court". In fact, the application for rejection of plaint under Order 7 Rule 11 CPC was allowed and the plaint of the plaintiffs was rejected. The impugned order passed by Additional District Judge, Ambala shows as if the application moved by the petitioners was rejected by the trial Court, whereas, the application moved by the respondent was allowed and the plaint was rejected.

Accordingly, the present revision petition is allowed and the impugned order dated 10.01.2017 passed by the Additional District Judge, Ambala is set aside and the case is remanded back for afresh consideration keeping in view the facts and provisions as mentioned above, preferably within a period of two months from the date of receipt of certified copy of the order after proper intimation to the parties.

(DAYA CHAUDHARY)
JUDGE

22.02.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes