

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

Civil Revision No. 144 of 2017

Date of decision:- March 27, 2017

SURESH AND OTHERS

....PETITIONERS..

VERSUS

JAGDISH CHAND

....RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Y.D. Kaushik, Advocate,
for the petitioners.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, the petitioners have sought setting aside of order dated 13.12.2016 (Annexure P-3) passed by ld. Civil Judge (Junior Division), Faridabad whereby an application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure (for short, "CPC") has been dismissed.

2. The contention of learned counsel for the petitioners while assailing the impugned order dated 13.12.2016 is that in the year 2010, the respondent-plaintiff instituted a suit for permanent injunction, which was withdrawn by him. Thereafter, in the year 2015, respondent-plaintiff filed a fresh suit on the same ground for seeking permanent and mandatory injunction against the petitioners. On receipt of notice of the present suit,

the petitioners moved an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the suit is liable to be rejected under Order II Rule 2 CPC and in view of the previous institution and withdrawal of suit for permanent injunction and that the suit of the respondent-plaintiff is under valued as the plaintiff has sought relief for possession after removal of illegal and un-authorised construction.

3. Learned counsel for the petitioners further contends that at the time of withdrawal of suit instituted previously, no permission to file a fresh one on the same cause of action was sought. Further, the requisite stamp fee has also not been affixed on the plaint by the respondent-plaintiff. The impugned order is the result of non-application of judicious mind and an application moved under Order VII Rule 11 CPC has been dismissed simply on the ground that question of court fee is admissible under law and facts and further that the ld. trial court has fallen in error while observing that fresh cause of action arose in favour of respondent-plaintiff on 10.04.2015 when the petitioners refused to remove the illegal and unauthorized construction from the encroached portion and also extended threats to dispossess the respondent-plaintiff. The impugned order is absolutely against the provisions contained under Order II Rule 2 CPC as well as Order VII Rules 4 and 5 CPC, which deals with the affixation of the court fee.

4. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners but find the same to be without any legal weight.

5. For the proper appreciation of the matter in controversy involved in the instant revision, it would be appropriate to have a glance

upon the provisions of Order VII Rule 11 CPC, which reads as under:-

“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 provision of Rule 9;”*

6. A bare perusal of the aforesaid provisions makes it abundantly clear that the plaint can be rejected on any of the grounds enumerated therein. Firstly, where the plaint does not disclose a cause of action; where the relief claimed is undervalued and the plaintiff on being required by the Court to correct the valuation within a time, has failed to do so; where the relief claimed is properly valued yet the plaint is returned insufficiently stamped and on being required by the Court to supply requisite stamp paper within a time to be fixed by the court, fails to do so; where the statement in the plaint appears to be barred by time and where the plaintiff has failed to comply with the provision of Rule 9 CPC.

7. Adverting to the facts of the case in hand, the rejection of the plaint has been sought on twin grounds. Firstly, that the suit is barred under Order II Rule 2 CPC in view of the withdrawal of earlier suit without permission to file a fresh one on the same cause of action and secondly that the plaint is undervalued and *ad valorem* court fee is required to be fixed.

8. Before proceeding further to decide the matter in controversy, it would be pertinent to mention that the rejection of plaint is to be determined solely in terms of what is averred or alleged in the plaint and not on the basis of the allegations made by the defendant(s) in his written statement or in an application for rejection of the plaint. The Court is obliged to read the entire plaint as a whole to find out its cause of action or that it is barred by limitation or by any other law. In case, "***Sajjan Sikaria v. Shakuntala Devi Mishra, (2005) 13 SCC 687***", it has been held by the Hon'ble Apex Court that an application under Order VII Rule 11 CPC, consideration of written statement is not a condition precedent and only averments in the plaint have to be considered.

9. Adverting to the facts of the present case and from the averments made in the plaint, it emerges that the cause of action arose in favour of respondent-plaintiff on 10.04.2015 when defendants refused to remove the illegal and unauthorized construction and to hand over the vacant possession of the entire suit property. As such, at this stage it cannot be said that suit of the respondent-plaintiff is barred by Order VII Rule 11 CPC. As far as the second ground with regard to the affixation of the *ad valorem* court fee is concerned, undoubtedly, it is a mixed question of law and facts and at the preliminary stage, that too, in the absence of the

evidence, such a question cannot be decided. Moreover, the matter in this regard can be dealt with at the final stage and if the Court comes to the conclusion that the respondent-plaintiff has not fixed *ad valorem* fee as required under law, the respondent-plaintiff can be asked to make the deficiency of the court fee within a prescribed period of limitation and in case the same is not done, suit can be dismissed.

10. Thus, this Court does not find any infirmity or illegality in the impugned order dated 13.12.2016. The same is held to be legally and factually valid, that too, inconsonance with the law applicable to the facts and circumstances of the case in hand.

11. In the light of what has been discussed above, the instant petition being devoid of merits is dismissed whereby the impugned order dated 13.12.2016 is upheld.

12. No order as to costs.

March 27, 2017
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes