

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.19 of 2016 (O&M)

Date of decision:16.5.2017

Kamal Gupta and others

...Petitioners

Versus

Dr.Ranmeet Batra

...Respondent

CR No.20 of 2016

Kamal Gupta and others

...Petitioners

Versus

Dr.Rupinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Amar Vivek, Advocate for the petitioners.
Ms.Divyastuti Parsoon, Advocate for the respondent in
CR No.19 of 2016.
Respondent in person in CR No.20 of 2016.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical civil revision petitions bearing Civil
Revision Nos. 19 and 20 of 2016 are being decided together, vide this
common order, with the consent of learned counsel for the parties, as both
these civil revision petitions are arising out of similar set of facts. However,

for the facility of reference, facts are being culled out from CR No.19 of 2016.

Feeling aggrieved against the identical impugned orders dated 9.10.2015 passed by the learned District Judge, whereby appeal of the plaintiff was allowed and the orders dated 26.9.2014 passed by the learned trial Court, rejecting the plaint was set aside, defendants have approached this Court by way of these two identical civil revision petitions, for setting aside the impugned orders.

Notice of motion was issued.

Heard learned counsel for the parties.

Placing reliance on the following judgments in **RFA No.757/2010 (N.N.S. Rana vs Union of India and Others) decided on 16 September 2011 (Delhi High Court), Bolandanda Pemmaya and Anr. Vs Ayaradara Kushalappa” AIR 1966 Kant 13 (Karnataka High Court), A.N.Shanmugam Vs. G.Saravanan, decided on 9.1.2015 (Madras High Court), CS(OS) 503/2009 (B.C. Rana (Retd.) (Brig.) Vs. Ms.Seema Katoch and others), decided on 15.10.2012 (Delhi High Court), C.R.P. (PD) No.547 of 2012 “A.N. Shanmugam vs. G.Saravanan” decided on 9 January, 2015 (Madras High Court), CS (SO) 531/2005 (M/S. Crop Care Federation of India vs Rajasthan Patrika (Pvt) Ltd.) decided on 27 November 2009 (Delhi High Court), CS (OS) 268/2011 (Raj Nath Khosla vs Acharya Dr John R Biswas & Ors) decided on 3.9.2012 (Delhi High Court), Nau Nihal Singh Rana vs Sunil Kumar, decided on 31.7.2013 (Delhi High Court), Essel Infraprojects Ltd. v. Devendra Prakash Mishra, 2015 (1) AIR Bom.R**

482, R.Rajagopal v.J. Jayalaitha (DB), 2006 AIR (Madras) 312, RSA 195 of 2015, decided on 19.11.2015 and CS(OS) No.1313/2008 (Vijay Gulati vs Radhika & Ors), decided on 5.10.2010 (Delhi High Court), learned counsel for the petitioners vehemently contended that the learned District Judge proceeded on a misconceived approach, while passing the impugned judgments, which are contrary to the law laid down in the cases referred to hereinabove. He further submits that the orders passed by the learned trial court were legally justified and the same deserve to be upheld. Referring to the documents contained in Annexures P-1 to P-3, learned counsel for the petitioners would contend that since prosecution did not commence, there was no question of any false prosecution by the petitioners against the respondents and the learned trial court rightly rejected the complaints of the plaintiffs. Learned counsel for the petitioners concluded by submitting that both the suits were not maintainable, as they did not disclose any cause of action against the petitioners-defendants. He prays for setting aside the impugned judgments dated 9.10.2015 (Annexure P-6) passed by the learned District Judge, by allowing both these civil revision petitions.

Per contra learned counsel for the respondent in Civil Revision No.19 of 2016 and respondent in person in Civil Revision No.20 of 2016 contended that the impugned judgments are based on true facts of the case and the same deserve to be upheld. They further contended that as the learned trial court could not appreciate the true facts of the case as well as the relevant principles of law, the learned District Judge rightly allowed the appeals filed by the plaintiffs-respondents. They pray for dismissal of both these civil revision petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts of the cases in hand, both these civil revision petitions have been found without any merit. The impugned judgments passed by the learned District Judge deserve to be upheld. To say so, reasons are more than one, which are being recorded hereinafter.

Two identical civil suits for damages to the tune of Rs.10 lacs or any other amount, which the court deem fit on account of false prosecution of the plaintiffs by the defendants, were filed. Defendants filed applications under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaints on the ground that the suits for damages were not maintainable, as the same were not disclosing any cause of action. The learned trial court allowed the applications in both the civil suits and rejected the plaints, vide its similar orders dated 26.9.2014 (Annexure P-5). Plaintiffs filed two appeals, which came to be allowed by the learned District Judge, vide separate but identical impugned judgments dated 9.10.2015 (Annexure P-6). Hence these two revision petitions under Article 227 of the Constitution of India filed, at the hands of defendants.

A combined reading of documents placed on record in the form of Annexures P-1 to P-6, including the impugned judgments passed by the learned District Judge, will make it crystal clear that the impugned judgments in both these cases passed by the learned District Judge are factually correct and legally justified. The moment cognizance of complaint

(Annexure P-1), moved on behalf of the petitioners, was taken by the investigating agency by issuing notice under Section 160 Cr.P.C. to the plaintiffs, all the relatives, acquaintances, friends and patients of the plaintiffs-respondents, who are medical professionals, would start looking upon them, treating them in low esteem. Plaintiffs were being called by the investigating agency in the police station time and again, which would certainly cause harm to the reputation of the doctors-plaintiffs, tarnishing their image in the estimation of general public, including their relatives, family members, friends and patients.

It would become very difficult for the plaintiffs-respondents in both these cases to explain their innocence and false implication, at the hands of defendants-petitioners, because it would not be possible for them to convince each and everybody. Having said that, this Court feels no hesitation to conclude that rejecting the complaints at its very threshold, despite there being very serious allegations leveled by the plaintiffs against the defendants, would entail very serious consequences. In such a situation, court has to exercise its power with circumspection in rejecting the complaints, thus, the learned District Judge was well within her jurisdiction to pass the impugned judgments and the same deserve to be upheld, for this reason.

Distinction between rejection of complaint and dismissal of suit must be understood in clear terms. So far as the peculiar fact situation obtaining on record in the cases in hand is concerned, this Court is of the considered view that the complaints have clearly disclosed a cause of action. One should not depend on the written statement filed or yet to be filed by the defendants, for coming to a conclusion whether cause of action is

disclosed by the plaint or not. Careful perusal of plaint and documents attached with it would be the determining factor.

As notice above, since the rejection of plaint at the very threshold would entail serious consequences, the court should be hesitant to exercise its jurisdiction under Order 7 Rule 11 CPC unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute. It is also pertinent to note here that disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Further, it is only when the court comes to a definite conclusion that any of the conditions enumerated in clauses (a) to (f) of Rule 11 CPC are satisfied, the plaint can be rejected in exceptional circumstances.

It is equally important to note here that truthfulness of narration of facts in the plaint or written statement are not be adjudged at that stage. For the purposes of deciding an application under Order 7 Rule 11 CPC, the averments taken in the plaint are the germane; the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. It is the substance of the matter which has to be considered and not the technicalities.

As noticed hereinabove, perusal of the plaints (Annexure P-4 in both the cases) coupled with the documents placed on record as Annexures P-1 to P-3, will make it crystal clear that present one was not at all a case for rejection of the plaint at the threshold and the learned District Judge committed no error of law, while allowing the appeals of plaintiffs in

both these cases and the impugned judgments deserve to be upheld, for this reason also.

So far as the judgments relied upon by the learned counsel for the petitioners, in the cases referred to hereinabove, are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioners, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the

case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered

and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER

294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR 1962 SC 680)

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

It is not even the argued case on behalf of the petitioners that the suits filed by the plaintiffs were barred by any law in force. As and when there is even a slightest doubt about the cause of action, benefit of doubt must go to the plaintiffs. While exercising its power for rejecting the plaint, the court has to act with utmost caution. Whether the plaintiffs will ultimately succeed or fail, will also not be the deciding factor for rejecting the plaint. Whenever a civil action is brought to the court, it is to be decided on preponderance of evidence.

Civil cause is not to be decided as a criminal matter. It goes without saying that standard of proof in a criminal case and civil matter would not be the same. In the criminal case, prosecution has to prove its case beyond reasonable shadow of doubt, whereas in the civil matter, plaintiff can prove his pleaded case by leading cogent and convincing evidence but not beyond shadow of doubt. In this view of the matter, court has to proceed very cautiously in rejecting the plaint at the threshold.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as different High Courts, including this Court, in ***Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and others, 1994 (2) SCC 392,***

D.Ramachandran Vs. R.V. Janakiraman, 1999 (3) SCC 267, Liverpool & London S.P. & I Asson. Ltd. Vs. M.V. Sea Success I and another, 2004 (9) SCC 512, Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005 (7) SCC 510, Rajesh Grover Vs.Smt. Rita Khurana and others, 2005 (4) R.C.R. (Civil) 721(P&H), Arun Sharma Vs. Ushal Sunderam, 2015 (2) R.C.R. (Civil) 72, M/s Crescent Petroleum Ltd. Vs. M.V. "MONCHEGORSK", and another, 2000 AIR (Bombay) 161 and Panchsila Hospitality Ventures Ltd. and Anr. Vs. Mrs. Praneeta Soni and Others, 2009 (3) R.C.R. (Civil) 21.

It is also equally important to note here that it is the settled principle of law that at the time of rejection of plaint, only the averments taken in the plaint are to be examined, considered and appreciated and the defence taken by the defendants is not to be taken into consideration. Further, real object of Order 7 Rule 11 CPC is to keep out of courts irresponsible law suits. It is also meant to discourage and curtail the frivolous litigation. The court can also exercise its power under Order 7 Rule 11 CPC, wherever it finds that any civil suit amounts to an abuse of process of the court, in the sense that it is a bogus or vexatious litigation. Weakness or strength of the case of the parties is also not to be adjudged at the stage of considering and deciding the application under Order 7 Rule 11 CPC.

Keeping the above-said guiding factors in view, proceeding on a holistic, pragmatic and constructive approach, with a view to do substantial justice between the parties and also to avoid miscarriage of justice, this Court is of the considered opinion that the plaint does disclose

cause of action and it could not have been rejected at the threshold. The learned District Judge has rightly appreciated true facts of the case as well as the abovesaid relevant principles of law, while passing the identical impugned judgments, which have been found based on sound reasons and the same deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these revision petitions are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, both the civil revision petitions stand dismissed, however, with no order as to costs.

Pending application, if any, stands disposed of.

16.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No