

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 119

Civil Revision No.1800 of 2017 (O & M)

Date of Decision: *March 14, 2017*

Harjit Singh & another

.... PETITIONERS

VERSUS

Jasmail Singh & another

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. N.S. Swaitch, Advocate, for the petitioners.

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Jaspal Singh, J

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside of order dated January 11, 2017 passed by the Civil Judge (Senior Division), Ludhiana whereby an application moved by the petitioners under Order VII Rule 11 CPC for rejection of the plaint has been dismissed.

2. Challenging the impugned order, it has been argued by learned counsel for the petitioners that it is absolutely against the provisions contained in Order IV Rule 2 CPC as well as Order VII Rule 11(e) CPC. Order IV Rule 2 CPC makes it mandatory to file alongwith plaint the copies of the plaint for each of the defendants, pre-paid registered

acknowledgement due covers with complete and correct address of each of the defendants written on them and the prescribed process fee. Non-compliance of the said mandatory provision entails the rejection of plaint under Order VII Rule 11 CPC. On this sole ground that impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, the application deserves to be allowed and the plaint rejected, but, this Court does not find any legal weight in the aforesaid contentions raised by learned counsel for the petitioners in view of settled principles of law.

3. Such a controversy came for hearing before the Hon'ble Kerala High Court in *V.P. Abdul Kareem v. Mehroof Manalody, 2017(1) CCC 81* in which it has been categorically observed that word "shall" appearing in Order IV Rule 2 CPC is to be read as word "may". Thus, it is not mandatory but directory. It is not the requirement of law that the plaint must be rejected. The court has discretion to allow the parties to comply with the provisions. Otherwise also, it cannot be said that the petitioners – defendant Nos.2 & 3 have suffered any loss or damage or the non-compliance has caused prejudice to them. Therefore, this Court is of the considered view that the impugned order is absolutely in consonance with the legal proposition applicable to the facts & circumstances of the case and it calls for no interference by this Court.

4. As a net result of the aforesaid discussion, this Court finds no merit in the instant petition and as such, the same is dismissed.

5. No order as to costs.

March 14, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No