

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CR No. 277 of 2017
DECIDED ON: JANUARY 18, 2017

KISHORI LAL

....PETITIONER

VERSUS

MURTI MANDIR SHRI DURGA DEVI

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Parvesh Jaglan, Advocate
 for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated November 30, 2016 (Annexure P-8) passed by learned Additional Civil Judge (Sr. Division), Jind whereby, an application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure (for short 'Code') for rejection of plaint, has been dismissed.

The contention of learned counsel for the petitioner is that while dismissing the application for rejection of plaint preferred by the petitioner under Order VII Rule 11 of the Code, the learned trial Court has committed a material irregularity and patent illegality, which is otherwise not sustainable in the eyes of law. In fact, learned trial Court has failed to appreciate that the suit

filed by the respondent/plaintiff is not maintainable under the Transfer of Property Act and only a petition for eviction/rejection under the provision of Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Act'), could only be filed. He further contends that Section 1(3) of the Act makes it crystal clear that this Act applies on all the buildings situated in the urban areas which are 10 years old but the learned trial Court did not consider that the disputed shop is in existence for the last more than 10 years of its renting out. Thus, the civil suit for possession is not legally maintainable and the plaint is liable to be rejected on this sole ground.

After bestowing due consideration to the submissions made by learned counsel for the petitioner and going through the record available on file, this Court does not find any legal and factual weight.

By now it is pretty settled that while deciding the application under Order VII Rule 11 of the Code, the learned trial Court has only to consider the submission made in the plaint and not the allegations made by the defendant in his written statement or in his application filed for rejection of the plaint. Whether the shop in question was constructed 10 years prior to the coming into operation of the Act or subsequent thereto, is a matter of evidence and the averment made in this regard by the defendant in his written statement cannot be taken to be a gospel truth at this stage. The issue whether the suit is maintainable or not can only be determined by learned trial Court after allowing the parties to lead evidence in this regard. The plaint cannot be rejected simply on the basis of allegations made by the defendant in his written statement, especially in the circumstances that the case of the respondent/plaintiff is that the shop in question was constructed in the Month of March 2009 when it was

rented out to the defendant.

Thus, there is no infirmity or illegality in the impugned order and the same is absolutely in consonance with the evidence available on record. As such, it stands dismissed.

JANUARY 18, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*