

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

**CR No.2814 of 2017 (O&M)
Date of decision: 24.04.2017**

Paramjot Kaur

..Petitioner

Versus

State Bank of Patiala and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Anureet Singh Sidhu, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 17.01.2017 passed by the Additional Civil Judge (Senior Division), Patiala, whereby, the application moved by the petitioner under Order 7 Rule 11 CPC has been rejected.

Briefly, the facts of the case as made out in the present revision petition are that respondent No.1 filed a suit for recovery of ₹7,25,319.57P inclusive of interest and other charges upto 19.11.2015 by way of sale of hypothecated stocks. The husband of the petitioner was guarantor of the loan amount sanctioned by respondent No.1. During pendency of the suit, the petitioner moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that her husband (defendant No.2) is suffering from serious mental disorder and is not in a position to think

properly. Said application was dismissed vide order dated 17.01.2017, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the application moved by the petitioner has wrongly been dismissed by ignoring the mental condition of defendant No.2. Learned counsel further submits that the impugned order was passed without taking into consideration the medical certificate showing that the husband of the petitioner is suffering from chronic mental disorder and is not in a position to recognize anybody and his physical movement is also restricted because of nature of ailment. The impugned order is totally non-speaking and has been passed without any application of mind. Learned counsel also submits that the husband of the petitioner was arrayed as defendant No.2 being guarantor of the loan amount, however, a person, who is insane and suffering from metal disorder, cannot be sued in the suit and as such, the suit is not maintainable against husband of the petitioner i.e., defendant No.2.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The facts relating to filing of suit by plaintiff-respondent No.1 and thereafter filing of application by the petitioner under Order 7 Rule 11 CPC for rejection of plaint are not disputed.

The application moved by the petitioner under Order 7 Rule 11 CPC has been dismissed on the ground that the documents placed on record are to be proved during trial and the suit cannot be rejected at this stage without proper appreciation of evidence.

On perusal of the contents of the application and impugned order, it is apparent that the plaint cannot be rejected only on the basis of averments/allegations made by the petitioner in the application.

Order 7 Rule 11 CPC is reproduced as under: -

“Order 7 Rule 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 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 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.”

Rule 11 Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. It can be raised at any stage by raising objection. The word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. However, the rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

In ***Saleem Bhai and others vs State of Maharashtra and others 2003(1) SCC 557***, it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which are required to be looked into for deciding an application are the averments in the plaint. The trial Court can exercise the power at any stage of the suit i.e., after filing of the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.

Similarly, in another judgment of Hon'ble the Apex Court in case ***I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and others 1998(1) RCR (Civil) 391 (SC)***, it was held that the basic question to be decided

while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been started with a view to get out of Order 7 Rule 11 of the Code.

This power should be exercised by the Court for taking care to see the grounds mentioned therein is fulfilled or not. The whole plaint has to be read. Any part of the plaint cannot be rejected if no cause of action is disclosed and plaint as a whole is to be rejected. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. The Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is *prima facie* of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

The Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e., (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

The power under Order 7, Rule 11 speaks of rejection of plaint under four circumstances, the first one being non-disclosure of cause of action, and the last one is on a bar of suit under any provision of law. The other two grounds on which a plaint can be rejected relate to valuation and

non-payment of Court fees, which are not matters concerned. For an order under Order 7, Rule 11, Civil Procedure Code, it is the plaint and the plaint alone which is to be considered and in case, if the plaint made out a case indicating a cause of action then the falsity of the claim would be a matter to be determined at the trial.

While deciding application filed by the defendant for rejection of suit under Order 7 Rule 11, the trial Court is required to reach at the conclusion. By considering the conditions under Order 7 Rule 11, the necessary order is required to be passed.

Hon'ble the Apex Court in ***P.V. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy and another vs. P. Neeradha Reddy and others etc., 2015(2) RCR (Civil) 43*** has held as under:-

“ Rejection of the plaint under Order 7, Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7, Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7, Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the

averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

Same issue was there before Hon'ble the Apex Court in its recent judgment in ***Kuldeep Singh Pathania vs. Bikram Singh Jaryal, 2017(1) RCR (Civil) 890***. The relevant para Nos.7 to 11 of the judgment are reproduced as under: -

“7. It appears, the High Court committed a mistake in the present case, since four out of the six issues settled were taken as the preliminary issues. Two such issues actually are relatable only to Order VII Rule 11 of the Code, in the sense those issues pertained to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. Merely because it is a trial on preliminary issues at the stage of Order XIV, the scope does not change or expand. The stage at which such an enquiry is undertaken by the court makes no difference since an enquiry under Order VII Rule 11 (a) of the Code can be taken up at any stage.

8. Thus, for an enquiry under Order VII Rule 11 (a), only the pleadings of the plaintiff-petitioner can be looked into even if it is at the stage of trial of

preliminary issues under Order XIV Rule 2(2). But the entire pleadings on both sides can be looked into under Order XIV Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit.

9. In the present case, the issue relates to an enquiry under Order VII Rule 11(a) of the Code, and hence, there is no question of a preliminary issue being tried under Order XIV Rule 2(2) of the Code. The court exercised its jurisdiction only under Section 83 (1) (a) of the Act read with Order VII Rule 11(a) of the Code. Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any, filed by the opposite party for rejection under Order VII Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.

*10. In **Mayar (H.K.) Ltd. and others v. Owners & Parties, Vessel M.V. Fortune Express and others, (2006) 3 SCC 100** this Court has dealt with a similar issue. To the extent relevant, paragraph-12 reads as follows:*

*“12. From the aforesaid, it is apparent that the
plaint cannot be rejected on the basis of the*

allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. ...”

*11. It is not necessary to load this judgment with other judgments dealing with this first principle of Order VII Rule 11(a) of the Code. As held by this Court in **Virender Nath Gautam v. Satpal Singh and others, (2007) 3 SCC 617** at paragraph-52:*

“52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.”

While dismissing application filed by the petitioner, it has clearly been mentioned that the genuineness of the medical certificate placed on record has been challenged by the plaintiff by alleging that the same is forged document and whether the medical certificate is genuine or forged document is matter of evidence to be placed on record by both the parties. The liability of defendant No.2 would be subject to evidence placed on record regarding his insanity. It is also a matter of evidence to be seen during trial as to whether defendant No.2 is a person of unsound mind. Accordingly, the suit cannot be rejected at this stage qua defendant No.2.

Moreover, he himself has signed the documents of loan and stood guarantor and also submitted copies of the documents signed by him.

Accordingly, I find no reason to interfere with the impugned order and as such, the revision petition being devoid of any merit is dismissed.

However, the petitioner is at liberty to avail the appropriate remedy at the appropriate stage.

24.04.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No