

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

CR No.3379 of 2017

Date of decision:11.5.2017

Surinder Kumar Sharma

...Petitioner

Versus

Arun Sareen

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sachin Mittal, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 6.4.2017 (Annexure P-4) passed by the learned trial court, dismissing his application under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short), defendant has approached this Court by way of instant revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

The only objection raised by the petitioner in his application under Order 7 Rule 11 CPC was that the plaintiff ought to have filed an appropriate ejectment petition under the Haryana (Control of Rent & Eviction) Act, 1973 ('the Act of 1973' for short), instead of filing the present suit for possession, recovery of arrears of rent and for damages. A bare perusal of the impugned order passed by the learned trial court would

show that the occupation certificate qua the suit property was issued by the competent authority of Haryana Urban Development Authority as late as on 9.2.2011. It is also a matter of record that such a property would not be covered under the provisions of Section 1(3) of the Act of 1973, the relevant part of which reads as under:-

“Nothing in this act shall apply to any building the construction of which is complete on or after the commencement of this Act for a period of ten years from the date of its completion.”

It is also not in dispute that as per the above-said occupation certificate issued by HUDA, the provisions of the Act of 1973 would not be attracted qua the house in question. In such a situation, the only remedy available to the plaintiff was to file the suit for possession, recovery of arrears of rent and for damages, which was rightly filed. That is what has been rightly held by the learned trial court, while passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

It is also pertinent to note here that the learned Rent Controller would have no jurisdiction to try and decide the nature of cause of action raised by plaintiff-respondent herein. Such a jurisdiction would be available only with the learned civil court. Further, in view of the above-said relevant provisions of law, since the Act of 1973 did not apply qua the building in question, plaintiff had every right to file the present suit in the present form, which would be maintainable. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and

the same deserves to be upheld, for this reason also.

Further, no prejudice of any kind, whatsoever, has been caused to the petitioner-defendant, while passing the impugned order by the learned trial Court. In this view of the matter, no fault can be found with the impugned order passed by the learned trial court and the same deserves to be upheld, for this reason as well.

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

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

11.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE