

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

C.R. No.3403 of 2017

Date of Decision:- 04.07.2017

Punjab National Bank

....Petitioner

vs.

Inder Preet Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Bhatia, Advocate,
for the petitioner.

Mr. R. Kartikeya, Advocate,
for respondents No.1 and 2.

Mr. Anand Chhibbar, Sr. Advocate with
Mr. Vaibhav Sahni, Advocate,
for respondent No.4.

DAYA CHAUDHARY, J.

Plaintiffs-Inder Preet Kaur and Narinder Kaur filed a suit for declaration to the effect that impugned notice dated 9.2.2017 issued by defendants No. 1 and 2 were illegal, arbitrary and not binding upon the rights of the plaintiffs. A prayer was also made for a direction to defendants No. 1 and 2 to facilitate the rendition of accounts by submitting the entire record and also for passing a decree for consequential relief of mandatory and permanent injunction restraining defendants No.1 and 2 from taking any coercive action against the plaintiffs on the basis of notices issued to them. A further relief was also sought for initiating proceedings

against defendant Nos. 1 and 2 under the Banking Regulation Act and other statutory provisions with a prayer to release the title documents of the properties which have been withheld illegally and arbitrarily.

During pendency of the suit, an application under Order 7 Rule 11 CPC was filed by petitioner-defendant-Bank for rejection of the plaint on the ground of jurisdiction, which is still pending. Plaintiff-respondents No. 1 and 2 also moved an application under Section 151 CPC for production of record, which was allowed vide impugned order dated 10.4.2017 whereby defendant-Bank has been directed to produce the original record pertaining to loan account of defendant No.3. Impugned order dated 10.4.2017 has been challenged by petitioner-Punjab National Bank on the ground that no direction can be issued to produce the record when the application moved under Order 7 Rule 11 CPC is still pending and for deciding said application, production of original record is not required.

Learned counsel for the petitioner submits that allegations of fraud are matter of evidence and same can be decided during trial. The record has no relevancy at this stage for decision of application filed under Order 7 Rule 11 CPC as it is to be decided independently. The original record is only required to scrutinize the allegations of fraud. Learned counsel also submits that petitioner-Bank has filed reply to the application moved under Section 151 CPC specifically stating therein that before proceeding further, the application moved under Order 7 Rule 11 CPC, is to be decided on the basis of pleadings made in the plaint. Learned counsel also submits that the learned Civil Judge has failed to appreciate the issue as the jurisdiction of the Civil Court to entertain and try the suit is barred as

per provisions of Section 34 of Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short 'The SARFAESI Act). As per provisions of Section 17 of the SARFAESI Act, 2002 the appropriate remedy with respondent No.1 is to approach Debt Recovery Tribunal (DRT). Learned counsel for the petitioner submits that the impugned order passed by the learned Civil Judge is contrary to the provisions of Section 34 of the SARFAESI Act as Civil Court does not have any jurisdiction. Learned counsel for the petitioner has relied upon the judgments passed by Hon'ble the Supreme Court in **Bhau Ram vs. Janak Singh and others**, AIR 2012 Supreme Court 3023, **Saleem Bhai and others Vs. State of Maharashtra and others**, AIR 2003 Supreme Court 759, and a judgment of this Court passed in the case of **HDFC Bank Limited Patiala vs. Nawal Kishore and others**, CR No. 5235 of 2015 decided on 27.8.2016 in support of his arguments.

Learned counsel for the respondents submits that production of record is necessary just to know the authenticity of the documents and fraud. In case it is found that fraud has been committed, then the Civil Court only has jurisdiction. The trial Court can reach to the conclusion as to whether allegations of fraud are made out or not. Learned counsel also submits that the application moved under Order 7 Rule 11 CPC is to be decided independently on the basis of pleadings made in the plaint. There is no co-relation between two applications.

Heard arguments of learned counsel for the parties and have also perused the impugned order whereby application moved under Section 151 CPC has been allowed.

Now, the question for consideration by this Court is as to whether the application moved under Section 151 CPC is to be decided first when another application under Order 7 Rule 11 CPC is pending. 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.”

Order 7 Rule 11 of the Code, it is to be seen as to whether any cause of action for rejection of the suit has arisen or not. The object of Order 7 Rule 11 of the Code is to keep out of Courts the irresponsible law suits as 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 *prima facie* is of the view that the suit is an abuse of the process of the Court or the litigation is bogus and irresponsible. 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 by exercising the powers provided under Order 7 Rule 11 of the Code. In case there is a cause of action, then it is to be decided on the basis of averments made in the plaint and by considering the averments to be correct. A cause of action is a bundle of facts which is 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. Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. It has three clauses permitting the Court at any stage of the proceedings to strike out or amend any matter in any pleadings. 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 with regard to a bar to file 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 fee. Accordingly, it is the plaint and the plaint alone which is to be considered and in case if the plaint makes out a case indicating a cause of action, then the falsity of the claim would be a matter to be determined at the trial.

Admittedly, in the present case, application under Order 7 Rule 11 CPC is pending and application moved under Section 151 CPC has been allowed with a direction to produce the record just to see the falsity of the documents or jurisdiction of the Civil Court. The trial Court instead of deciding the application under Section 151 CPC should have first decided the application under Order 7 Rule 11 CPC to see as to whether the suit can be rejected at the initial stage on the ground of jurisdiction and other factors as per provisions of Order 7 Rule 11 CPC. While allowing the application, nothing has been mentioned by the trial Court as to how this application filed under Section 151 CPC is necessary to be decided first when other application under Order 7 Rule 11 CPC is still pending. The contents of this application could have been the grounds for consideration in deciding the application moved under Order 7 Rule 11 CPC. There was no necessity to decide this application separately. Learned Civil Judge has failed to appreciate the legal position that application under Order 7 Rule 11 CPC is to be decided on the basis of pleadings in the plaint and not on the basis of any other evidence. The purpose made out in the impugned order is indirectly the same as in the application under Order 7 Rule 11 CPC.

Accordingly, the revision petition is allowed and impugned order dated 10.4.2017 is set aside. However, the trial Court is at liberty to decide the application moved under Order 7 Rule 11 CPC first which is still pending.

July 04, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes