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

CR No.4477 of 2017

Date of decision:12.7.2017

Jubilant Foodworks Ltd.

...Petitioner

Versus

Sampurn Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Kushagra Mahajan, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 27.3.2017 passed by the learned trial court, whereby an application under Order VII Rule 11 of the Code of Civil Procedure ('CPC' for short), seeking rejection of plaint was dismissed, defendant has approached this Court by way of present revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner being the defendant is yet to file a written statement to the plaint of the plaintiff. Without filing the written statement, petitioner moved an application under Order VII Rule 11 CPC, seeking rejection of the plaint. It is premature on the part of the petitioner to claim this relief at this stage of the suit. It is so said because petitioner should have first filed its written statement. On completion of the

pleadings of the parties, the learned trial court would have framed the appropriate issues.

Petitioner could have made a request to the learned trial court to treat one of the issues as preliminary issue about the maintainability of the suit in the present form. Thereafter, the learned trial court could have passed an appropriate order deciding said preliminary issue, in accordance with law. In the absence of the written statement filed by the petitioner, averments taken in the application cannot be treated as gospel truth, throwing the case of the plaintiff out of consideration at the very threshold. 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 not even the pleaded or argued case on behalf of the petitioner that a bare reading of the plaint filed by the plaintiff-respondent would show it to be a manifestly vexatious or frivolous litigation. Once the averments taken by the plaintiff in his plaint cannot be said to be frivolous or vexatious, his plaint cannot be ordered to be rejected even without seeking the written statement of the defendant. Under these peculiar 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.

So far as the judgments relied upon by the learned counsel for the petitioner in **Appeal (Civil) No.4500 of 2004 (N.V.Srinivasa Murthy and others Vs. Mariyamma (Dead) by proposed LRs) (SC), Gaurav Thukral Vs. Godrej & Boyce Mfg. Company Ltd. and others, 2017(2)**

PLR 216 (P&H), Mahabir Tanti and others Vs. Y.C.Deveshwar and another, 2007(5) RCR (Civil) 504 (Patna High Court), Ramesh Kumar Malik Vs. The Rohtak District, Co-operative Milk Producers Union Ltd., Rohtak and another, 2010 (1) PLR 169 (P&H) and Chander Shekhar Malhotra Vs. Nirlon Limited and others, 2000 (1) Bom 638, are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

No other argument was raised.

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 instant civil 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.

12.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No