

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4515 of 2017
Date of decision: 13.07.2017

Shimla Rani

... Petitioner

Vs.

Harish Grover and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Thapar, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant civil revision petition, at the hands of defendant No.10, filed under Article 227 of the Constitution of India, is directed against the order dated 20.05.2017 (Annexure P-11), whereby two identical applications filed by defendants No.1 and 10 under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short) seeking rejection of the plaint, were dismissed by the learned trial Court.

Heard learned counsel for the petitioner.

A bare combined reading of the plaint as well as the impugned order passed by the learned trial Court shall make it crystal clear that the plaint does disclose the cause of action and the learned trial Court rightly followed the law laid down by the Hon'ble Supreme Court as well as this Court in number of relevant judgments, before passing the impugned order, because of which the

impugned order deserves to be upheld. It is so said because it is the cardinal principle of law that Order 7 Rule 11 CPC confers a drastic power on the Court to terminate a civil action at the threshold and because of this reason, conditions precedent to exercise of powers under Order 7 Rule 11 CPC are and have to be stringent.

Before exercising the powers under Order 7 Rule 11 CPC, the learned Court of competent jurisdiction would be duty bound to read the averments taken in the plaint as a whole to find out, whether it discloses a cause of action or whether the suit is barred under any law. It is also to be kept in mind that at the stage of exercise of powers under Order 7 Rule 11 CPC, the stand taken by the defendant in the written statement or in the application for restoration of the plaint is wholly immaterial, because it is the only averment taken in the plaint, which are taken into consideration. In case, reading of the averments taken in the plaint disclose a cause of action and the suit is not found barred under any law in force, the plaint cannot be rejected.

So far as the fact situation obtaining on record of the case in hand is concerned, the plaint clearly discloses the cause of action. The suit is also not barred under any law in force. In fact, the plaintiff has clearly raised more than one disputed questions of facts in the plaint, which cannot be said to be not disclosing a cause of action by any stretch of imagination. 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, dismissing two similar applications moved by defendants No.1 and 10 together vide impugned order and the same deserves to be upheld, for this reason also.

The view that has been taken by this Court also finds support from

the following judgments: -

1. ***Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and others, 1994 (2) SCC 392 (SC).***
2. ***D. Ramachandran Vs. R.V. Janakiraman, 1999 (3) SCC 267 (SC).***
3. ***Liverpool & London S.P. & I Asson. Ltd. Vs. M.V. Sea Success I and another, 2004 (9) SCC 512 (SC).***
4. ***Popat and Kotecha Property Vs. State Bank of India Staff Association, 2005 (7) SCC 510 (SC).***
5. ***P.V. Guru Raj Reddy Rep. by GPS Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others etc., 2015 (8) SCC 331 (SC).***
6. ***Kanwal Kishore Manchanda and anr. Vs. S.D. Technical Services Pvt. Ltd., 2005 (121) DLT 98 (Delhi High Court).***
7. ***Panchsila Hospitality Ventures Ltd. and anr. Vs. Mrs. Praneeta Soni and others, 2009 (3) RCR (Civil) 21 (Delhi High Court)***
8. ***M/s Crescent Petroleum Ltd. Vs. M.V. "MONCHEGORSK"; and another Vs. 2000 (AIR (Bombay) 161.***
9. ***Rajesh Grover Vs. Smt. Rita Khurana and others, 2005 (4) RCR (Civil) 721 (P&H).***
10. ***Arun Sharma Vs. Usha Sunderam, 2015 (2) RCR (Civil) 72 (P&H).***
11. ***Kamal Gupta and others Vs. Dr. Ranmeet Batra, decided on 16.05.2017 by this Court in CR No.19 of 2016.***

Distinction between dismissal of suit and rejection of plaint must also be understood in clear terms. As noticed hereinabove, peculiar fact situation obtaining on record of the case in hand clearly disclosed the cause of action. One should not depend on the written statement filed or yet to be filed by the defendants or the averments taken in their application under Order 7 Rule 11 CPC, for coming to the conclusion whether the cause of action is

disclosed by the plaintiff or not. Careful perusal of the plaint and documents attached therewith would be the determining factor. Since rejection of the plaint at the very threshold would entail serious consequences, the learned Court of competent jurisdiction should be hesitant to exercise its jurisdiction under Order 7 Rule 11 CPC, unless the factual score warrants exercise of such power and the matter in issue falls within the four corners of requirement of the statute. It is also relevant to point out here that disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Further, it is only when the Court comes to a definite conclusion that any of the conditions enumerated in Clauses 1(a), 2 (b) of Rule 11 CPC are satisfied, the plaint can be rejected in exceptional circumstances.

It is equally important to note here that truthfulness of narration of facts in the plaint are not to be adjudged at the stage of exercising the powers under Order 7 Rule 11 CPC. It is so said because for the purpose of deciding an application under Order 7 Rule 11 CPC, the averments taken in the plaint are the germane; the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. The intention of the party concerned is to be gathered primarily from the tenor and terms of the pleadings as a whole. It is the substance of the matter, which has to be considered and not the technicalities.

As and when there is even a slightest doubt about the cause of action, benefit of doubt must go to the plaintiffs. While exercising its powers for rejecting the plaint, the Court has to act with utmost caution. Whether the plaintiff will ultimately succeed or fail, will also not be the deciding factor for rejecting the plaint. Whenever a civil action is brought to the Court, it is

decided on preponderance of evidence. Civil case is not to be decided as a criminal matter. It also goes without saying that the standard of proof in a criminal matter and civil case would not be at par. In the criminal case, prosecution has to prove his case beyond reasonable shadow of doubt, whereas in the civil matter, plaintiff can prove his case by leading cogent and convincing evidence but not beyond shadow of doubt. In this view of the matter, the learned Court of competent jurisdiction has to proceed very cautiously in rejecting the plaint at the very threshold.

Another equally important aspect of the matter, at the time of exercising the powers under Order 7 Rule 11 CPC, is that real object of Order 7 Rule 11 CPC is to keep out of Courts irresponsible law suits. It is also meant to discourage and curtail the frivolous litigation. The Court can also exercise its powers under Order 7 Rule 11 CPC whenever it finds that any civil suit amounts to an abuse of process of the Court, in the sense that it is bogus or vexatious litigation. However, weakness or strength of the case of the parties is not to be adjudged at the stage of considering and deciding the application under Order 7 Rule 11 CPC.

The arguments raised by learned counsel for the petitioner have been found wholly misconceived, being contrary to the abovesaid guiding factors, based on the law laid down by the Hon'ble Supreme Court and different High Courts, including this Court in the cases referred to hereinabove. Since the learned trial Court has discussed, considered and appreciated every relevant aspect of the matter before passing the impugned order, the same deserves to be upheld, because the impugned order has been found based on a judicious approach adopted by the learned trial Court.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial Court, which may warrant any interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found based on sound reasons and also in consonance with the law laid down by the Hon'ble Supreme Court, because of which the impugned order deserves to be upheld, for this reason as well..

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality or perversity has been found in the impugned order passed by the learned trial Court, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

13.07.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No