

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

CR No.5575 of 2016 (O&M)
Date of decision : 12.07.2017

Darbara Singh @ Bara

...Petitioner

Versus

Malkiat Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Tarunveer Vashisht, Advocate for the petitioner.

Mr. Rajnikant Upadhyay, Advocate for respondent Nos.1 to 3.

ANIL KSHETARPAL, J. (Oral)

This revision petition is at the behest of the defendant No.1 against the order dated 02.05.2016. The learned Trial Court dismissed the application filed by the defendant No.1.

Learned counsel appearing on behalf of petitioner submits that the defendant No.1 had filed application for dismissal of the suit on the ground that in the criminal case, against the order of the acquittal, leave to appeal has been granted and, therefore, the matter is subjudice. He has further contended that since the appeal has been admitted, therefore, the cause of action to file the present suit has disappeared.

I have considered the arguments of learned counsel for the petitioner. However I am unable to agree with the same.

Mere admission of an appeal would not entitle the defendant in

a suit for recovery of damages on account of malicious prosecution to move an application for dismissal of the suit. The plaint can be rejected at the initial stage in accordance with the provisions of Order 7 Rule 11 CPC, which is extracted as under:-

“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 comply with the provision of Rule 9.”*

I am afraid that case as setup by the defendant No.1 in the application do not fall within the parameters of provisions of Order 7 Rule 11 CPC.

Still further merely because leave to appeal has been granted against the order by which plaintiff was acquitted, the cause of action as made out in the suit would not vanish/disappear. Mere grant of leave to appeal does not have any bearing on the cause of action. The plaintiff has prayed for recovery of damages on account of malicious prosecution. Until

and unless the judgment of the acquittal is reversed, the cause of action continues to exists.

With the aforesaid observations, present revision petition is dismissed.

12.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No