

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

**CR No.5952 of 2017 (O&M)
Date of Decision: 12.10.2017**

Rashme Bahl

...Petitioner(s)

Versus

Baljeet Singh and others

... Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Saurabh Kapoor, Advocate
for the petitioner.

Mr. Vikas Bahl, Sr. Advocate with
Mr. Amit Jain, Advocate
for respondent No.1.

Mr. Arun Luthra, Advocate
for respondent No.2.

ANITA CHAUDHRY, J.

The petitioner has assailed the order passed on the application filed by the petitioner under Order 7 Rule 11 C.P.C.

To understand the context, it would be necessary to briefly states the facts.

Mrs. Sohini Wadehra owned land in village Daulatpur Nasirabad (Carterpuri), Tehsil & District Gurgaon. She was in USA and had given a General Power of Attorney to her son i.e. defendant No.1 Rajnish Wadehra. Rajnish Wadehra entered into an agreement

to sell a part of the property to the plaintiff Baljeet Singh and received Rs.2.75/- crores as earnest money. The total consideration amount payable was Rs.7,20,43,000.00/-. The balance amount was to be paid in instalments. The last date for execution of the sale deed was agreed to be in June, 2015. Mrs. Sohini Wadehra died a week after the agreement. The plaintiff learnt that Sohini Wadehra's daughter Rashme Bahl had filed a suit in Delhi High Court with respect to the estate left behind by the mother and claimed that she was co-owner. The plaintiff received a letter through his counsel that there was a *status quo* order in those proceedings and was informed that defendant No.1 was trying to settle the dispute with the sisters. The plaintiff claimed that he went to the office of the Sub Registrar but the Sub Registrar had received information that no sale deed could be registered in view of the order passed by the Delhi High Court. The plaintiff filed a suit seeking recovery of the earnest money and arrayed both the sons and daughter of Sohini Wadehra.

Rashme Bahl filed an application under Order 7 Rule 11 C.P.C., seeking rejection of the plaint as there was no cause of action against her and it was defendant No.1, her brother, who had received the amount and the liability, if any, would rest with him. It was pleaded that the legal notice sent by the plaintiff was only sent to defendant No.1 calling upon him to return the amount with interest and there was no fault or involvement of the applicant and at no point she was in the know of things and there was no cause of action to

sue her and the plaintiff had cleverly drafted the plaint to create an illusion of cause of action and the suit should be dismissed as against her.

The plaintiff filed reply (Annexure P-5) and pleaded that the sale deed could not be registered on account of *mala fide* intention on the part of the defendants and all the defendants were legal heirs of Sohini Wadhera and admittedly there was litigation pending between the defendants *inter se* and defendant No.3 was claiming a share in the property and a *status quo* order had been passed and, therefore, he had filed a suit for recovery. It was pleaded that the application had been filed with a view to delay the proceedings and they have not cross-examined the witnesses.

It was explained that he was not aware of the legal heirs therefore, notice was sent to only to defendant No.1. It was pleaded that the act and conduct of the defendants showed that they were in collusion and were harassing him.

The trial Court by a reasoned order dismissed the application. It noted the arguments made by both the sides in Para-7 which reads as follows:-

'After having heard the rival contentions and going through the accredited laws cited by the parties, this Court is of the humble opinion that the plaint as well as meaningful reading of the plaint leaves no room for doubt that in the plaint the plaintiff has sequentially narrated the facts leading to the stage where the filing of the suit was necessitated. The plaintiff entered into agreement to sell with Smt. Sohini Wadehra through her

GPA, who is defendant No.1 in the suit. After five days, Smt. Sohini Wadehra died. The sale deed could not be executed. Litigation amongst the defendants is admittedly pending before the Hon'ble High Court of Delhi. The plaintiff chose to file the suit for recovery for getting the money back. The act of the agent is the act of principal. Defendant No.1 acted only as an agent. In the suit for recovery of the money which was given as part payment in pursuance to the agreement to sell. The legal heirs of Smt. Sohini Wadehra are necessary parties. If the allegations made in the plaint are proved, the estate of Smt. Sohini Wadehra would be liable. The power of rejection of plaint at the threshold entails serious consequences and the exercise of this power is not justified merely because the story in the pleadings is highly improbable or is difficult to be believed by the opposite party. While considering this application, the strength or the weakness of the case of the plaintiff is not to be seen. The cause of action is clearly culled out on a conjoint reading of all the paragraphs of the plaint. The plaint discloses the cause of action. The correctness or the soundness of the allegations constituting the cause of action is beyond the purview at this stage'.

I have heard both the sides. It is not in dispute that an agreement had been entered into by one of the sons as General Power of Attorney of Sohini Wadehra.

Mrs. Sohini Wadehra had died within a week of the agreement to sell. The plaintiff had filed a suit to get his money back and had arrayed all the legal heirs and they are necessary parties. There is litigation going on with respect to his property in Delhi High Court.

The submission on behalf of the petitioner was that there could be no charge with respect to her share and the Court has to lift the veil to see the collusion between the parties and no notice had been issued to the petitioner and the plaintiff could have filed an application under Order 12 Rule 6 C.P.C.

The submission of the counsel representing the plaintiff was that after the death of Sohini Wadehra, the property would devolve on the legal heirs and all the legal heirs were necessary parties and it was urged that if the suit is decreed and the amount is not paid then the amount will have to be recovered from the property and all the co-owners were necessary parties.

The petitioner is aggrieved on account of her inclusion as a party to the *lis*. The petitioner claims herself to be co-owner in the property. Her brother had entered into an agreement on behalf of the mother to sell the property. The mother died a few days later. After her death, the son could not have sold the property. The petitioner also claims a right in this property. The plaintiff was informed of the *lis* and finding that the litigation would be long and unending, the plaintiff choose to file a suit for recovery. All the legal heirs of Sohini Wadehra are a necessary party and had rightly been impleaded specially when the petitioner claims a right in the property. All the questions would be determined at the trial/execution and it cannot be said that the plaintiff had no cause of action against the petitioner.

It is clear that in order to consider Order 7 Rule 11 CPC, the Court has to look into the averments in the plaint. It is also clear that the averments in the writtten statement are immaterial and it is the duty of the Court to scrutinize the pleas taken in the plaint at that stage. The plea taken by the defendants in the written statement are wholly irrelevant. These principles have been reiterated in ***Raptakos Brett & Co. Ltd. Vs. Ganesh Property 1998(2) RCR (Rent) 353 : 1998(4) RCR (Civil) 208 : (1998)7 SCC 184 and Mayar (H.K.) Ltd. and others Vs. Owners & Parties, Vessel M.V. Fortune Express and others, (2006)3 SCC 100.***

I find no infirmity in the order. The petition is dismissed.

October 12, 2017

ps-l

**(ANITA CHAUDHRY)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No