

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

CR No. 5958 of 2017(O&M)

Date of decision: 5.9.2017

M/s Amritsaria Mal Ashok Kumar and anotherPetitioners

VERSUS

M/s Nav Bharat Roller Flour MillsRespondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. R.K. Bajaj, Advocate for the petitioners.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 21.08.2017 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Hoshiarpur whereby application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the petitioners/defendants for rejection of plaint has been dismissed.

The sole submission made by counsel for the petitioners is that as Sh. Arvind Khosla through whom M/s Nav Bharat Roller Flour Mills, Naloyan, Hoshiarpur has filed a suit for recovery was no longer a partner of the said concern at the time of institution of the suit on 01.06.2013 as he ceased to be partner of the said concern on 22.05.2013, the firm could not sue through Sh. Arvind Khosla.

I have heard counsel for the petitioners, perused the paper-book particularly the application under Order 7 Rule 11 read with Section 151 CPC, reply to the application and the order impugned.

Perusal of the application would reveal that the petitioners have sought dismissal of the suit by invoking Order 7 Rule 11 CPC inter

alia on the grounds raised in paras 2 and 3 of the application, read as follows:-

“2. That as a matter of fact the recovery suit has been filed by Arvind Kumar Khosla, Partner of M/s Navbharat Roller Flour Mills Hoshiarpur and same has not been signed by him on the said suit, as the said suit has been signed by his attorney which is against the law and also abuses of process of law. It is well settled law that as per CPC suit is to be signed by the agreed person and not by the attorney.

3. That moreover, two times partnership deed has been changed by way of changing constitution and the continuing partners have never been impleaded in the suit. Hence, the suit also deserves to be dismissed on this score also.”

No such plea has been raised in the application that Sh. Arvind Khosla was no longer a partner of M/s Nav Bharat Roller Flour Mills, Naloyan, Hoshiarpur at the time of institution of the suit. This apart, an application for rejection of plaint is to be decided only on the basis of pleadings in the plaint and no other materials can be taken into consideration. Meaning thereby, allegations raised in the written statement or any documents appended thereto cannot be examined at this stage of the proceedings. It is a different matter that suit filed by the respondent/plaintiff may fail in case Sh. Arvind Khosla is not able to establish that he was a partner of the firm, thus, competent to institute the suit on behalf of the concerned firm, seeking recovery.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

AUGUST 5, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no