

In the High Court of Punjab and Haryana at Chandigarh

242

CR No. 6696 of 2016 (O&M)

Date of decision: 12.7.2017

AJAIB SINGH DECEASED TH LRS

.....petitioners

Versus

STATE BANK OF INDIA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sandeep Punchhi, Advocate,for the petitioners.

Raj Mohan Singh, J.(oral)

Petitioners have assailed the order dated 26.7.2016 passed by Civil Judge (Jr.Divn.) Ellanabad rejecting the application filed by them under Order 7 Rule 11 CPC and also the order dated 26.7.2016 permitting the respondents to withdraw the suit on oral request with liberty to file fresh one on the same cause of action.

The suit was filed against Ajaib Singh, father of the petitioners, who was dead at the time of filing of the suit. The fact regarding death of Ajaib Singh was not within the knowledge of the bank. Plaintiff-bank moved an application to implead legal representatives of Ajaib Singh. The prayer was opposed on the ground that legal representatives of dead person could not be impleaded because death of the defendant took place prior to filing of the civil suit. The said application was allowed by the trial Court.

The defendants filed an application under Order 7

Rule 11 CPC for rejection of plaint on the ground that the suit was filed against a dead person and the application for bringing on record legal representatives was not maintainable. The application under Order 7 Rule 11 CPC was dismissed by the trial Court and on the same day on the request of the plaintiff-bank, suit itself was ordered to be withdrawn with a liberty to file fresh one on the same cause of action. Learned counsel for the petitioners informed this Court that fresh suit has already been filed.

Evidently, the grievance of the petitioners cannot be looked into, inasmuch as, that the defendant has to face trial of a suit. If the earlier suit for which legal representatives were duly brought on record has to be contested, then also defendant is required to face the rigor of trial of the suit. Second suit which has been filed pursuant to the liberty granted by the civil court has to be countered by the defendants, by making representation. In any case, no prejudice is going to be caused to the petitioners in both the eventualities. Cause of justice cannot be ignored at the threshold of technicality of present type.

In view of above, I do not see any error of jurisdiction in the order passed by the trial Court. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

July 12, 2017

anita

Whether reasoned/speaking

Yes/No