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

Civil Revision No.648 of 2017

Date of decision: 31.01.2017

Rishi Pal

...Petitioner

Versus

Rajbir and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Alok Jain, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-defendant no.1 challenges the order dated 25.10.2016 (Annexure P/1) passed by the Civil Judge (Junior Division), Faridabad whereby application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint was partly allowed to the extent that the plaintiff was asked to fix the ad valorem court fee on the market value. However, on the issue of limitation, the trial Court held that it was a mixed question of law and facts and therefore, without appraisal of the evidence, limitation could not be determined. It is against this later portion, the petitioner-defendant no.1 is aggrieved.

The suit filed by respondent no.1-Rajbir was for declaration declaring the agreement to sell dated 6.4.2009 and GPA of even date and compromise deed Ex. C1 as null and void and for permanent injunction.

The allegations were that the loan had been taken from the present petitioner and in such circumstances, the signatures had been obtained on blank papers. The matter had been settled by way of compromise interse the petitioner and his brother Raj Kumar. The present

petitioner-Rishi Pal had filed a civil suit against him through the GPA and defendant no.2 had appeared before the Court and arrived at a settlement and gave compromise statement due to which a fraud had been committed as such. The application is accordingly filed that the suit which had been filed on 15.1.2016 (Annexure P/5) was barred by limitation as the award was of 15.2.2012.

Counsel for the petitioner has referred to legal notice dated 5.2.2013 (Annexure P/4) sent by the plaintiff to submit that there was a cancellation of the GPA given to defendant no.2 and also legal notice dated 6.2.2013 (Annexure P/3) which was sent by the plaintiff to show the date of knowledge of the plaintiff.

It is also to be noticed that the said notices did not find mention in the application under Order 7 Rule 11 CPC. It was the defence of the plaintiff that there was also an FIR that the award was result of a fraud. It is in such circumstances the application for rejection of plaint had been dismissed. It is settled principle that the plaint is not to be rejected at the threshold and only in extraordinary circumstances it is to be resorted to. Reference can be made to **Rajesh Grover Vs. Smt. Rita Khurana and others** 2006(2) PLR 244. The relevant observations read as under:-

“10. The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise this power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it should be so done in exceptional-circumstances. The truthfulness of narration of facts in the plaint or the written statement are not to be judged at the stage of rejection of plaint. That is a matter of evidence which the Court shall go

into at the trial of the case. The weakness or the strength of the case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit.

11. The trial Court in the instant case held that the plaint discloses fresh cause of action and that the plaintiffs-respondents have a legal right to sue the defendants or earnest money in view of alleged breach of contract by the defendant-petitioner by not fulfilling the statutory obligation and the plaintiff-respondents are not precluded from instituting the suit and seeking relief as claimed herein. The objection that the suit was barred under Order 2, Rule 2 of the Code has been rejected by the learned trial Court on two counts, firstly that in the plaint there are neither pleadings to this effect nor any issue was framed nor any opportunity was given to the parties to lead evidence and secondly, that both the suits are based on a different cause of action. The plea of suit being barred by limitation has been rejected on the ground that it is a matter of evidence and shall be decided at appropriate stage.”

The said view has been reiterated by the Apex Court in

P.V.Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy and another

Vs. P.Neeradha Reddy and others 2015(8) SCC 331. The relevant observations read as under:-

5. Rejection of the plaint under Order 7 Rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for

rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

In such circumstances, this Court is of the opinion that the order dated 25.10.2016 (Annexure P/1) passed by the trial Court is very justified since serious allegation of fraud had been levelled. As noticed criminal proceedings had also been initiated though it is stated by the counsel for the petitioner that the same had now been cancelled. Thus, it would be appropriate if the matter is decided after adducing proper evidence for adjudication of the rights of the parties.

Accordingly, the present revision petition is dismissed.

January 31, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No