

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

CR No.702 of 2017.

Date of Decision: 02.02.2017.

Balbir Singh

....Petitioner.

VERSUS

Punjab Agro Food Grains Corporation Ltd/ PAIC, Chandigarh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 08.11.2016 passed by learned Additional Civil Judge (Senior Division), Jalandhar by virtue of which his application under Order 7 Rule 11(D) of the Code of Civil Produce (for short, "C.P.C.") in a suit for recovery of Rs.1,19,49,454/- alongwith interest filed by the respondent-plaintiff, was dismissed.

The submissions made Mr. Rajiv Joshi, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner contends that before filing the suit for recovery, a departmental enquiry was held by the respondent and the Enquiry Officer in his report had mentioned that the losses beyond the control of the delinquent official can't be attributed to him. He had also held that the losses required to be re-worked out, but the punishing authority

arbitrarily and in complete disregard to the principles of natural justice

recorded his own findings and besides passing order of dismissal of the petitioner also ordered for recovery of Rs.1,19,49,454/- from him. The order of dismissal and recovery was challenged by the petitioner by filing a Civil Writ Petition No.20267 of 2009 before this Court which stands admitted vide order dated 16.10.2010. To support his argument that negligence in performance of duty under a contract of employment would not give rise to cause of action for recovery of money, learned counsel relied upon **Punjab State Civil Supplies Corp. v. Sikander Singh, AIR 2006 Supreme Court 1438.**

In **Kamala and others v. K.T. Eshwara SA and others, (2008)12 SCC 661** while dealing with the principle engrafted under Order VII Rule 11 (d) CPC, the Hon'ble Apex Court held as under:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

The observation made by Hon'ble Apex Court in **Punjab State Civil Supplies Corp. Ltd. vs. Sikander Singh's** case (supra) was in the light of the facts of the said case.

It is not the case of the petitioner that in the Civil Writ Petition filed by the petitioner this Court had passed any order staying recovery of the amount from the petitioner as ordered by the appointing/ punishing authority. The respondent has resorted to due process of law for the recovery. The issues relating to entitlement of the respondent to recover the amount as well as the extent of amount recoverable will be the issues to be decided after trial of the case. Learned counsel for the petitioner has failed to refer to any provision of law which bars the filing of the instant suit and on that ground the plaint could be rejected.

Thus, there being no illegality or perversity warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

02.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**