

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.8081 of 2015

Date of decision:8.8.2017

Rajender Maggu and another

...Petitioners

Versus

Kailash Chand Maggu

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Suman Jain, Advocate for the petitioners.
Mr.B.R.Vohra, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, at the hands of defendants, filed under Article 227 of the Constitution of India, is directed against the order dated 29.10.2015 (Annexure P-5), whereby their application under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short), seeking rejection of the plaint, was dismissed by the learned trial court.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the impugned order passed by the learned trial court would show that the impugned order has been rightly passed, strictly in accordance with the true facts of the case and following the law laid down by the Hon'ble Supreme Court as well as this Court. Petitioners-defendants, by way of their application under Order 7 Rule 11 CPC, were seeking rejection of the plaint on account of delay alone. The learned trial court has rightly observed in the impugned order that the evidence was

required to be produced by both the parties on the point of limitation.

As and when no particular date or time for performance of the agreement to sell is recorded therein, the learned trial court would be justified in asking the parties to lead their evidence on the issue of limitation at the appropriate stage of the suit, instead of rejecting the plaint at its threshold on account of delay alone. That is what was sought to be done by the learned trial court in the present case, while passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

Basic difference between dismissal of suit on merits and rejection of plaint must be understood in clear terms. There is no scope of confusing the one with the other because there is clear distinction. Further, exceptions apart, endeavour of the court should always be to decide the case on merits. Powers under Order 7 Rule 11 CPC cannot be exercised in routine. It is so said, because exercising the powers under Order 7 Rule 11 CPC, for the purpose of rejecting the plaint, would have serious consequences. Unless a very strong case is made out for rejection of plaint, the learned trial court should be slow, while exercising its power under Order 7 Rule 11 CPC.

It is equally true that no straight jacket formula can be laid for exercising the powers under Order 7 Rule 11 CPC. Each case is to be decided as per its own peculiar facts and circumstances. However, so far as the given fact situation obtaining on the record of the present case is concerned, the learned trial court was well justified in passing the impugned order and the same deserves to be upheld, for this reason also.

Dispute is amongst the real brothers. Defendants-petitioners were not being taken by surprise as they were fully aware about the facts and circumstances of the case, right from day one. No prejudice of any kind, whatsoever, has been caused to the petitioners by passing the impugned order, which has been found based on sound reasons and deserves to be upheld.

So far as the judgment, relied upon by the learned counsel for the petitioners in **Church of Christ Charitable Trust & Educational Charitable Society Vs. M/s. Ponniamman Educational Trust, 2012 (3) RCR (Civil) 811**, is concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgment, the same has not been found to be of any help to the petitioners, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the

Constitution of India. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

8.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No