IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Revision No. 7773 of 2017
Date of decision: 09.11.2017

M/s Windals Auto Pvt Limited and others .... Petitioners

Versus

M/s Pradhan Enterprises ....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ajaivir Singh, Advocate
for the petitioners

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Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 04.08.2017 (Annexure P4) passed by the Additional Civil Judge, Faridabad whereby application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure (in short, 'CPC') has been dismissed.

The sole submission made by counsel is that suit for recovery has been filed by M/s Pradhan Enterprises, Ballabgarh through its proprietor Shri Asis Pradhan but as proprietorship concern has no legal entity in the eye of law, suit could be instituted only by proprietor of the firm in his personal capacity. In support of his contention, he has relied upon Division Bench judgment of the Delhi High Court ***M/s Miraj Marketing Corporation v M/s Vishaka Engineering and another*, 2004 (115) DLT 471.**

I have heard counsel for the petitioners and perused the paper book particularly the order impugned.

The petitioners/defendants filed an application under Order VII Rule 11 CPC for rejection of plaint. Rule 11 of Order VII CPC contemplates six contingencies under which the plaint is liable to be rejected. Counsel for the petitioners, in response to a query, would inform that the petitioners had invoked Order VII Rule 11 (d) CPC for pressing their claim for rejection of plaint. A relevant extract therefrom reads as follows:-

> ***"11. Rejection of plaint***
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> *The plaint shall be rejected in the following cases:--*
>
> *(a) xx xx xx;*
> *(b) xx xx xx;*
> *(c) xx xx xx;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *(e)xx xx xx;*
> *(f) xx xx xx;"*

Counsel for the petitioners has failed to point out any law which bars filing of the suit by the proprietorship concern through its proprietor. This apart, as both the proprietorship concern and its proprietor are before the Court, defect if any, in form of the suit can be rectified at a later stage. The Division Bench of Delhi High Court in the referred authority, in view of its observations recorded in para 15 of the judgment, has held that the suit was not maintainable as Shri A K Pandey who claimed to be the sole proprietor of the firm did not file suit and Shri Amitabh Sharma was described in the cause title of the plaint only as an authorized representative and he (Amitabh Sharma) had neither signed the plaint nor he signed the power which was filed in the case. As such, I find myself unable to accept contention of the petitioners that the plaint is liable to be rejected under Order VII Rule 11 (d) CPC.

For the foregoing reasons, finding no merit, the petition is dismissed in limine. However, the petitioners are left at liberty to press before the Court below for framing of issue with regard to maintainability of the suit. Any such plea raised by the petitioners would be decided by the Court below, in accordance with law.

(Rekha Mittal)
Judge

09.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No