

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

CR No.1463 of 2018 (O&M)
Date of Decision : 28.08.2018

Kuldeep Vashisth

...Petitioner

VERSUS

Lajwanti Devi

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ravinder Hooda, Advocate
for the petitioner.

Ms. Babita, Legal Aid Counsel
for the respondent.

B.S.WALIA, J.

1. Revision petition has been filed challenging order dated 04.12.2017, passed by the learned Civil Judge (Junior Division), Panchkula, dismissing the application under Order VII Rule 11 CPC.

2. A perusal of the impugned order reveals that an application under Order VII Rule 11 CPC was filed before the learned trial Court contending that no valid cause of action had arisen in favour of the plaintiff with regard to the amount in question as the matter had already been settled vide compromise deed dated 06.03.2014, besides the respondent-plaintiff had already instituted a suit which was withdrawn on the basis of compromise, therefore, respondent-plaintiff was estopped from filing the present suit.

3. The application was dismissed on the ground that while deciding application under Order VII Rule 11 CPC, only the contents of the plaint

could be gone into and the Court could not go into the defence raised by the defendant in the written statement. Accordingly, the application was dismissed in view of the decision of Hon'ble the Supreme Court in *Rajiv Dhulla vs. M/s Aravali Apparels Pvt. Ltd.* Law Finder Doc ID #767599 (P&H), *Deutsche Bank AC vs. M/s Nahar Enterprises Ltd.* 2001 (1) CC 119 and *Church of Christ Charitable Trust and Educational Charitable Society vs. M/s Ponniamman Educational Trust* represented by its Chair Person Managing Trustee 2012 (3) RCR (Civil) 811.

4. Learned counsel states that once civil suit filed earlier by the respondent-plaintiff was dismissed as withdrawn in view of compromise dated 06.03.2014, a fresh suit was not maintainable in the absence of any permission having been granted to file the same. Learned counsel states that the petitioner does not press the revision petition qua dismissal of application under Order VII Rule 11 CPC and would be satisfied if the revision petition is disposed of by directing that the issue with regard to the maintainability of the suit on the ground that earlier suit having been got dismissed as withdrawn without obtaining liberty be directed to be treated as a preliminary issue in order to obviate the necessity of the parties to go through a full dressed trial in the eventuality of the objection of the petitioner being found to be correct.

5. Learned counsel for the respondent states that she has no objection if the revision petition is disposed of in the manner prayed for by learned counsel for the petitioner.

6. I have considered the submissions of learned counsel for the parties and am of the view that the plea with regard to the maintainability of the civil suit on account of earlier civil suit having been withdrawn has not been mentioned in the plaint, therefore, the application under Order VII Rule

11 CPC is not the proper remedy but in view of the decision of Hon'ble the Supreme Court in Soumitra Kumar Sen vs. Shyamal Kumar Sen and others 2018 (2) Apex Court Judgments 409, the matter can be disposed of by directing the learned trial Court to frame an issue with regard to maintainability of the suit and decide the same in the first instance so that the parties can be absolved of unnecessary agony of prolonged proceedings in case the petitioner is ultimately found to be correct in his statement. Relevant extract of the decision in Soumitra Kumar Sen's case (supra) is reproduced as under:-

“12) Before we part with, it is necessary to make certain comments. The appellant has mentioned about the earlier two cases which were filed by respondent no. 1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the courts in those proceedings. In fact, copies of the orders passed in judgment and decree dated March 31, 1997 passed by the Civil Judge (Junior Division), copy of the judgment dated March 31, 1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated July 31, 2014 passed by Civil Judge, Junior Division in Suit No. 268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial court gave a categorical finding that as per MoU

signed between the parties, respondent no. 1 had accepted a sum of Rs. 2,00,000/- and, therefore, the said suit was barred by principles of estoppel, waiver and acquiescence. In a case like this, though recourse to Order VII Rule 11 CPC by the appellant was not appropriate, at the same time, the trial court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions.”

7. In the light of the position as noted above, while dismissing the challenge to the impugned order, revision petition is disposed of by directing the learned trial Court to frame an issue with regard to the maintainability of the suit and to decide the same in the first instance.

8. Revision petition is disposed of in the aforementioned terms.

(B.S.WALIA)
JUDGE

28.08.2018

rajesh.k.khurana

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