

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.1765 of 2017

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Date of decision:24.5.2018

Bijay Shankar Halwasiya and others

.....Petitioners

v.

Bhiwani Sudhar & Vikas Samiti Bhiwani Regd. and others

.....Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arun Jain, Senior Advocate with Mr. Abhishek Dhull,
Advocate for the petitioners.

Mr. Mukesh Kumar Verma, Advocate for respondents No.1, 3
and 5.

None for respondents No.2, 4, 6 to 10,15 and 17 to 19.

Mr. Jagdish Manchanda, Advocate for respondent No.11.

Mr. Sumit Batra, Advocate for respondents No.12 to 14.

Ms Adrija Dass, Advocate for Mr. Amar Vivek, Advocate for
respondent No.16.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India praying for quashing the impugned order dated 21.1.2017 (Annexure-P.3) passed by the learned Civil Judge (Junior Division), Bhiwani, vide which the application filed by the petitioners under Order 7 Rule 11 CPC seeking rejection of the plaint of civil suit filed by the

plaintiffs/respondents and in the civil suit titled “Bhiwani Sudhar and Vikas Samiti Bhiwani (Regd.) and others Vs. Bijay Shankar Halwasiya and others) has been dismissed.

Notice of motion was issued in this case.

Mr. Mukesh Kumar Verma, learned Advocate has put in appearance on behalf of respondents No.1, 3 and 5, Mr. Jagdish Manchanda, learned Advocate on behalf of respondent No.11, Mr. Sumit Batra, learned Advocate on behalf of respondents No.12 to 14 and Ms Adrija Dass, learned Advocate for Mr. Amar Vivek, learned Advocate on behalf of respondent No.16 and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Bhiwani Sudhar and Vikas Samiti and others-plaintiffs filed suit against Bijay Shankar Halwasiya and others-defendants for declaration and injunction under Sections 9 and 91(1), 91(2) C.P.C. to the effect that Joint Multi-storey Building (By Joining Three Maps/Plots illegally) under construction by defendants No.1 to 4 in the name of Halwasia Mall “situated at Halwasia Bal Vihar alias Halwasia Vatika” (in front of K.M. College of Education), Bhiwani on the public park land in flagrant violation of the provisions of the Haryana Development and Regulations of Urban Areas Act, 1975 (hereinafter referred to as ‘HUDA Act’), Haryana Municipal Act, 1973 (hereinafter referred to as ‘the MC Act’), its buildings bye-laws/notifications as amended etc. is illegal, unsafe for plaintiffs, inhabitants of the area and general public and asking for other reliefs.

During the pendency of the suit, an application under Order 7 Rule 11 CPC was filed for rejection of the plaint by defendants No.1 and 2. It has been mainly stated in the application that after getting the site plan sanctioned and also submitting the requisite fees, the applicants completed construction on the properties in dispute. It has also been stated that these plaintiffs have no right/locus standi to file the present suit. It has been further prayed that the plaint is liable to be rejected as it discloses no cause of action. Other pleas regarding earlier litigation and applications under Section 340 Cr.P.C. etc. were taken.

The plaintiff No.1 filed reply opposing the application. It has been stated that the plaint could not be rejected under Order 7 Rule 11 CPC.

The counsel for the applicants argued before the lower Court that the plaintiffs are habitual litigants and usually files such suits for ulterior motives. It has been further stated that when similar issue has already been decided, this suit is barred by constructive *res judicata* and the plaint should be rejected.

The learned Civil Judge (Junior Division), Bhiwani, vide impugned order 21.1.2017 dismissed the application. The learned lower Court observed that in the earlier matter regarding permission under Section 91 CPC, the High Court has held that if the petitioners have legally constructed the building as they claim after obtaining all necessary statutory permissions and have legitimately raised the building, there is nothing for them to fear, but summary dismissal of application under Section 91 CPC is not legally permissible. The above observations of this Court in the earlier proceedings in the another suit shows that the plaintiffs have locus standi to

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file the suit. From the perusal of the record, it cannot be held that the plaint does not disclose any cause of action. The plaintiffs are alleging public nuisance which is to be seen only when the parties will produce the evidence. The suit of the plaintiffs, specially when the permission under Section 91 CPC has already been given, cannot be dismissed or the plaint cannot be rejected under Order 7 Rule 11 CPC summarily by saying that the plaintiffs have no locus standi or it does not disclose any cause of action.

Therefore, the impugned order dated 21.1.2017 passed by the learned Civil Judge (Junior Division), Bhiwani, is correct as per law and no illegality has been committed by the lower Court while dismissing the application. The impugned order does not require any interference from this Court and the same is upheld.

Finding no merit in this civil revision petition, the same is accordingly dismissed.

May 24, 2018.

**(Inderjit Singh)
Judge**

hsp

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