

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 2380 of 2018 (O&M)

Date of decision: 14.11.2018

Mukand Singh

.....petitioner

Versus

Mehar Kaur

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vikas Singh, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(oral)

Petitioner has challenged the order dated 26.2.2018 passed by the Additional District Judge, Patiala, whereby the appeal filed against the order dated 3.11.2017 passed by the Civil Judge (Sr.Divn.), Patiala under Order 7 Rule 11 CPC was dismissed.

As per averments made in the plaint, petitioner earlier sought to get the marriage annulled on the grounds stated under Section 11 of the Hindu Marriage Act. Having failed in the petition on merits, he ventured to file FAO No. 4-M of 2007 in the High Court. The said appeal was got dismissed as withdrawn vide order dated 12.7.2016. Thereafter, the suit for declaration challenging the validity of marriage between the parties came to be filed.

Defendant filed an application under Order 7 Rule 11 CPC. On the basis of averments made in the plaint, the application was allowed. The plaint was ordered to be rejected. Even the said order was assailed before the lower Appellate Court and the appeal was also

dismissed on 26.2.2018.

It is a settled principle of law that at the stage of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The plaintiff remained unsuccessful in the regular remedy under Section 11 of the Hindu Marriage Act. The said petition was decided on merits and has attained finality in view of withdrawal of the appeal from the High Court. The said judgment has not been assailed in any manner in the present suit for declaration, challenging the validity of marriage dated 7.11.1996. Even though the appeal against the order dated 3.11.2017 before the lower Appellate Court was not maintainable, but still in view of the order of dismissal recorded by the lower Appellate Court, this Court proceeded to consider the validity of order dated 3.11.2017 passed by the Civil Judge (Sr.Divn.), Patiala on its own merits.

In view of facts on record, particularly in view of the fact that the petitioner remained unsuccessful on earlier occasion in the proceedings under Section 11 of the Hindu Marriage Act and the averments made to that effect in the plaint itself, I deem it appropriate not to interfere in this revision petition. There is no error of jurisdiction in the impugned order passed by the trial Court.

This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

November 14, 2018
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Whether reasoned/Speaking **Yes/No**