

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CM-22466-CII-2018 IN/& CR-4309-2014

Date of decision : 15.10.2018

Narender Kumar and another

... Petitioners

Versus

Nirmal Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Pankaj Jain, Advocate
for the petitioners.

Mr.Aditya Jain, Advocate
for the respondent.

AMOL RATTAN SINGH, J.(ORAL)

Though by this application stay of further proceedings before the trial Court is sought, Mr. Jain, learned counsel for the applicants-petitioners, very fairly submits that the trial being near conclusion, he only seeks now that the issue of whether the suit would be maintainable or not in terms of Section 69 of the Partnership Act, 1932, be decided while dealing with all the issues framed therein.

He however submits that subsequently, on 12.09.2018, the trial Court has in fact declined to even go into that issue, in view of the fact that the application filed by the petitioners under Order 7 Rule 11 CPC on that very issue, was dismissed vide the order dated 24.05.2014 (leading to the filing of the present revision petition against that order).

Consequently, the issue itself, i.e. issue no.6 in the suit, has been struck out vide the said order dated 12.09.2018 (as has been annexed with this application).

Mr.Jain submits that though undoubtedly vide the order dated

24.05.2014 the application under Order 7 Rule 11 CPC was dismissed, however it would require to be determined by way of evidence as to whether the suit property was owned by the partnership firm or by any individual.

Thus, with no evidence having been led on that issue, the issue could not have been 'struck out' simply because the application under Order 7 Rule 11 CPC had been dismissed earlier, by holding that the suit was maintainable.

Learned counsel for the respondent very fairly submits that since the entire issue is with regard to whether the suit property was that of the firm or of the individual, he does not oppose the prayer now made by Mr.Jain, learned counsel for the petitioners.

That being so, even though the order dated 12.09.2018 passed by the trial Court has not been specifically challenged before this Court, with learned counsel for the respondent having taken a very fair stand, which in my opinion is otherwise also absolutely correct because if the said order were specifically challenged, this Court would also have come to the conclusion in any case.

Hence, the accompanying petition itself is disposed of with the order dated 12.09.2018 set aside; and a direction issued that issue no.6, as it stood prior to its being 'struck out' vide the aforesaid order, be decided by the trial Court on the basis of evidence led by parties on both sides.

(AMOL RATTAN SINGH)
JUDGE

October 15, 2018.

D.K./dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No