

202
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5222-2015 (O&M)
Date of decision : 8.5.2018

Pushpa Devi and another **Petitioners**
Versus
M/s Sorab Machine Tools **Respondent**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Lokesh Sinhal, Advocate for the petitioners.

Ms. Swati Batra, Advocate for
Mr. Manoj Bajaj, Advocate for the respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 5.5.2015 (Annexure P-4) passed by learned Civil Judge (Junior Division) Faridabad vide which an application filed by petitioners-defendants under Order VII Rule 11 of the Code of Civil Procedure 1908 was dismissed.

The plaint is sought to be rejected on three grounds i.e. first- limitation, second- advalorem Court fee is not fixed and third- the suit is barred under Order II Rule 2 of the Code of Civil Procedure 1908.

Heard.

A perusal of the file shows that suit is for mandatory injunction for return of certain machinery on which advalorem Court fee is not required to be affixed. Regarding the limitation it is stated that the possession was taken in the year 2001. However it is a question of fact as to whether a suit for return of certain machinery can be filed within three years and from which date limitation will start.

Learned counsel for the petitioner contends that in the earlier suit compromise was effected. Later on, plaintiff challenged the said compromise by filing a suit. The said suit was withdrawn, therefore, present suit is barred under Order II Rule 2 of the Code of Civil Procedure. Second suit was dismissed on 27.3.2008 by learned Civil Judge (Junior Division), Faridabad under Order VII Rule 11 of the Code of Civil Procedure.

I am of the view that some disputed questions are involved, therefore, extraordinary relief under Order VII Rule 11 of the Code of Civil Procedure 1908 may not be resorted to. Parties are to be given opportunities to put forward their side of the case.

Therefore, there is no illegality or infirmity in the order dated 5.5.2015 (Annexure P-4) passed by learned Civil Judge (Junior Division) Faridabad whereby it refused to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. Let the trial Court frame the issue on the points raised by the defendants and decide the same after allowing the parties to lead evidence.

Dismissed.

(KULDIP SINGH)
JUDGE

8.5.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No