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

**Civil Revision No.5447 of 2017 (O&M)
Date of Decision : 06.07.2018**

Adani Transmission India Ltd. Gurgaon, through authorized signatory
Sushil Kumar Sharma.

...Petitioner

Versus

Balbir Singh and others.

...Respondents

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

Present :- Mr. Arun Gupta, Advocate for
Mr. Raman Bansal, Advocate
for the petitioner.

B.S. Walia, J (Oral)

1. Despite service having been effected on the respondents, none has put in appearance even though the case was adjourned on a number of dates. In the circumstances, I am not inclined to adjourn the case any further.

2. Challenge is to impugned order dated 11.05.2017, Annexure P-4 passed by the learned Civil Judge, (Junior Division), Pehowa, District Kurukshetra dismissing the application filed by the petitioner/defendant under Order 7 Rule 11 of the CPC, despite the jurisdiction of the Civil Court being barred under Section 25 of the Haryana Canal and Drainage Act, 1974.

3. Brief facts of the case leading to the filing of the instant revision petition under Article 227 of the Constitution of India is that a civil suit was filed by the respondent/plaintiff with the assertion that a water course khal existed in the suit property which had been dismantled by the

petitioner/defendant. Prayer in the civil suit was for mandatory injunction. Application under Order 7 Rule 11 CPC was filed taking up the plea that under Section 25 read with Section 24 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as the Act), jurisdiction of the Civil Court was specifically barred. Section 25 of the Act reads as under :-

“Section 25. Bar of Jurisdiction of Civil Court - Notwithstanding anything contained in this Act or any other law for the time being in force, no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under Sections 17 to 24.”

4. A perusal thereof reveals that in respect of matters covered under Sections 17 to 24 of the Act *ibid*, jurisdiction of the Civil Court is barred.

5. Learned counsel contends that prayer made in the civil suit was for restoration of the demolished/altered water course which squarely fell within the ambit of Section 24 (1) of the Act, *ibid*. Therefore, in terms of Section 25 of the Act *ibid*, jurisdiction lay with the Sub Divisional Canal Officer and not the civil court. Section 24 (1) of the Act is reproduced as under :-

“Section 24. Restoration of demolished or altered etc. water course—(1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damages thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.”

6. The learned trial Court while taking into account that the civil suit had been filed with the assertion that the water course khal existed on the suit property which had been dismantled by the petitioner/defendant observed that although the suit was barred under Section 25 of the Haryana Canal and Drainage Act, 1974 but the Civil Court could be approached for enforcement of civil rights and it was for the Civil Court to decide whether the plaintiff was entitled to the relief sought or not.

7. Learned counsel contended that in terms of Order 7 Rule 11 (d) of the CPC if the suit appeared from the plaint to be barred by any law, application under Order 7 Rule 11 of the CPC was liable to be accepted and the plaint rejected.
8. A perusal of paragraph No. 4 of the plaint reveals the averments of the petitioner defendant having dismantled the water course forcibly and illegally. Prayer in the suit is for restoration of the water course in dispute to its original position. Since the jurisdiction in respect of grievance regarding demolition, alteration, enlargement or obstruction of water course or a temporary water course or in case of any damage in respect thereto is maintainable before the Sub Divisional Canal Officer, in terms of Section 24 (1) of the Haryana Canal and Drainage Act, 1974 and Section 25 of the Act ibid bars the jurisdiction of the Civil Courts in respect of matters falling within the ambit of Sections 17 to 24 of the Act, the civil suit on a bare reading of the plaint is not maintainable as the Civil Court does not have jurisdiction in terms of Section 25 read with Section 24(1) of the Act ibid.
9. Accordingly, the revision petition is allowed and impugned order dated 11.05.2017 passed by the learned Civil Judge, (Junior Division), Pehowa, District Kurukshetra is set aside.
10. Interim directions if any shall also stand vacated.

(B.S. Walia)
JUDGE

06.07.2018
Manpreet

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