

**C.M.No.2193-CII-2018 in/and
CR No.5801 of 2017**

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**C.M.No.2193-CII-2018 in/and
CR No.5801 of 2017
Date of decision:05.02.2018**

Nandita Saigal and another

... Petitioners

Vs.

Vijaya Bank and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Aditya Jain, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

C.M.No.2193-CII-2018

Prayer in the application is for preponment of the matter from 21.02.2018 to an early date on the ground that there is urgency in the matter and the case is listed for defendants' evidence before the trial Court.

Learned counsel for the applicant/petitioners prayed for hearing of the matter today itself as no notice of motion has been issued.

For the reasons stated in the application which is duly supported by an affidavit, same is allowed and hearing of the matter is preponed from 21.02.2018 to today and taken on board for hearing.

CR No.5801 of 2017

The present revision petition is directed against the impugned order dated 16.08.2017 (Annexure P-1) whereby, in lieu of the objections

taken by the petitioner-defendants, following issue no.3-A was framed:-

“Whether the suit of the plaintiff is not duly filed by an authorized and competent person?OPD”

Learned counsel for the petitioner/defendants submitted that as per the pleadings in paragraph 2 of the plaint, suit filed on behalf of the person, who is stated to have been authorized, was objected to by taking objection. Though the trial should have placed the onus on the parties instead of plaintiffs but had shifted the onus on defendants. The suit is slated for defendants' evidence. According to him, suit *ex facie* was not maintainable as the person who allegedly authorized was not competent in view of the provisions of Order 29 of Code of Civil Procedure.

I have heard the learned counsel for the petitioner-defendants and appraised the paper book. The order dated 16.08.2017 reads as under :-

“Vijaya Bank Vs. Nandita

*Present: Sh. Satyavir Singh, Adv. for the plaintiff.
Sh. L.K.Grover, Adv. for defendant.*

Amended written statement filed and cost also paid. From amended written statement following additional issue is required to be framed which read as follows:-

“Whether the suit of the plaintiff is not duly filed by an authorized and competent person?OPD”

No other issue arises. However, onus is objected stating that it should be OPP instead of OPD and requested for changing

the same. The request is declined as it is the defendant who has preliminary objected with regard to the fact that the suit is not filed by duly authorized person and because of this fact only defendant had sought amendment in his written statement. Thus the onus is upon the defendant to prove as the plaintiff has not filed the suit to an authorized and competent person. Now to come up for Pws. PW-1 be summoned for 22.08.2017.

*Archana
CJJD/JMIC/RC/FBD
UID No. HR0394”*

In paragraph 2 of the plaint, following pleadings were pleaded which read thus:-

“2. That Mr. R. Suresh is the Chief Manager and Principal Officer of the plaintiff Vijaya Bank at its Branch Office at NH-5, Near B.K. Chowk, NIT Distt. Faridabad (Hr.) who is well conversant with the facts of the present case and is competent to depose in the matter in dispute. He is also authorized to institute the present suit, sign pleading, engage counsels etc. and to do all the other act, things necessary in the name and on behalf of the plaintiff bank for the purpose of recovery of the plaintiff bank's dues and also for proper prosecution of the case vide General Power of Attorney executed in his favour by the plaintiff bank. Copy of his GPA is Annexure A-1.”

which were rebutted in the written statement in the following manner:-

“2. That para no.2 of the plaint as alleged is wrong and denied. Mr. R. Suresh is not competent to sign and verify the present suit against the answering defendants. Rest of the para is also wrong and denied and the suit has not been filed by duly authorized and competent person.”

I am of the view that since it is a mixed question of facts and law, onus would keep on shifting during the trial, the trial Court should not have entirely placed onus upon the defendants but on the parties. Since the suit is already slated for defendants' evidence, they are at liberty to lead evidence in support of part of burden qua onus, in accordance with law. Moreover, they are also at liberty to raise all the points at the final stage.

Accordingly, the revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

February 05, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No