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

**Civil Revision No. 7854 of 2013
Date of Decision : 03.07.2018**

Lakhmir Singh and others

.... Petitioners

Versus

Gobinder Kaur and others

.... Respondents

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

Present :- Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. H.S. Dhindsa, Advocate
for the respondents.

B.S.Walia J (Oral)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 10.05.2013 Annexure P-5 passed by the learned civil judge, (JD) Ludhiana whereby the application under Order 7 Rule 11 of the CPC filed by the petitioner defendant was dismissed.

2. Petitioner had set up a plea of concealment of factual position on account of non disclosure of dismissal of earlier civil suit No.72, dated 30th January, 1969 filed by the predecessor-in-interest of the respondent-plaintiff vide judgment and decree dated 24th June, 1972.

3. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in '**Soumitra Kumar Sen versus Shyamal Kumar Sen and others 2018 (2) Apex Court Judgment 409**', wherein the Hon'ble Supreme Court while upholding the order passed under Order

7 Rule 11 CPC held that the trial Court may, after framing issues, take up the issue which pertained to the maintainability of the civil suit and decide the same in the first instance. Relevant extract of the aforesaid decision is reproduced as under :-

“12. Before we part with, it is necessary to make certain comments. The appellant has mentioned about the earlier two cases which were filed by respondent No.1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the Courts in those proceedings. In fact, copies of the orders passed in judgment and decree dated March 31, 1997 passed by the Civil Judge (Junior Division), copy of the judgment dated March 31, 1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated July 31, 2014 passed by Civil Judge, Junior Division in Suit No.268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial Court gave a categorical finding that as per MoU signed between the parties, respondent No.1 had accepted a sum of ₹ 2,00,000/- and, therefore, the said suit was barred by principles of estoppels, waiver and acquiescence. In a case like this, though recourse to Order VII Rule 11 CPC by the appellant was not appropriate, at the same time, the trial Court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner, the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged

proceedings, in case the appellant is ultimately found to be correct in his submissions.”

4. In the light of the aforementioned decision, learned counsel stated that the petitioner would be satisfied if the revision petition is decided in similar terms.

5. Learned counsel for the respondent, states that he has no objection to the aforementioned prayer of the learned counsel for the petitioner. In the circumstances, the impugned order is upheld. However, the learned trial Court in view of the decision of Hon’ble the Supreme Court as referred to above, may after framing issues take up the issue which pertains to maintainability of the suit on account of concealment of material facts and decide the same in the first instance. The same would be in the interest of justice as the parties can be absolved of unnecessary agony of prolonged proceedings in case the petitioner is admittedly found to be correct in his submissions.

6. Resultantly, subject to the observations as made above, the revision petition is dismissed.

(B.S.Walia)
JUDGE

03.07.2018
Manpreet

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