

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

C.R. No.8828 of 2015

Date of Decision.17.05.2018

Chamkaur Singh and another

...Appellants

Vs

Naib Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Narula, Advocate
for the petitioners.

None for respondent No.1 to 3.

Ms. Devaki Anand Sullar, AAG, Punjab.

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AMIT RAWAL J.(ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 01.12.2015 whereby the application under Order 7 Rule 11 CPC for rejection of the plaint filed by the respondent-plaintiff has been dismissed.

Mr. Kamal Narula, learned counsel appearing on behalf of the petitioners submitted that the respondent-plaintiff after having lost two litigations by challenging the orders of the authorities in CWP No.19882 of 2005 (Annexure P-9), which was dismissed vide order dated 20.12.2005, filed the civil suit challenging the orders impugned (Annexure P-10), which was not maintainable in view of the provisions of Section 30-G of the Northern Canal Drainage Act but the Courts below have erroneously dismissed the application without looking into the aforementioned provisions, therefore, there is illegality and perversity.

There is no representation on behalf of the respondent-plaintiff despite service.

Ms. Devaki Anand Sullar, AAG, Punjab does not dispute the applicability of the provisions of Section 30G of the aforementioned Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of learned counsel for the petitioners. Concededly, the respondent-plaintiff in the writ petition had challenged the order dated 29.07.2005 (Annexure P-7), which is evident from the head note of the writ petition (Annexure P-9). The same reads as under:-

“Civil writ petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 29.7.2005 (Annexure P-2) passed by respondent No.2 and order dated 17.11.2005 (Annexure P-3) passed by respondent No.1.

And/or for any other writ, order of direction which in the circumstances of the case, this Hon’ble Court deems fit and proper be also passed.”

The suit (Annexure P-10) is also with regard to the relief as sought in the aforementioned writ petition, which had been dismissed by this Court vide order dated 20.12.2015. Therefore, the suit on the same cause of action was not maintainable. The Courts below had not examined the aforementioned fact as any order passed by the Canal Authority cannot be assailed in the Civil Court except

the orders passed without jurisdiction. The factum of non-disclosure of the dismissal of the writ petition had been intentionally withheld from the Court. In these circumstances, the suit can always be thrown out at any stage of the suit, for, the fraud vitiates everything.

For the reasons mentioned above, the order under challenge is not sustainable in the eyes of law and is hereby set aside. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

May 17, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No