

CR No.1787 of 2017 (O&M)

{1}

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

**CR No.1787 of 2017 (O&M)
Date of decision:24.01.2019**

Malayan Banking Berhad (Maybank)

... Petitioner

Vs.

Rakesh Handa and others

... Respondents

CR No.1788 of 2017 (O&M)

Malayan Banking Berhad (Maybank)

... Petitioner

Vs.

Rakesh Handa and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Devmani Bansal, Advocate
for the petitioner.

Ms. Pridhi Jaswinder Sandhu, Advocate for
Mr. Rajat Malhotra, Advocate
for respondent No.1.

Mr. K.P.S.Dhillon, Advocate
for respondent No.2.

Mr. N.C.Kinra, Advocate
for respondent No.6.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions bearing Nos.1787 and 1788 of 2017 arising out of the common impugned order dated 09.11.2016, whereby, application under Order 6 Rule 17 CPC for amendment of the plaint was allowed and application under Order 7 Rule 11 CPC for rejection of plaint, has been dismissed.

The respondent-plaintiffs instituted the suit in the year 2012 seeking permanent, mandatory and perpetual injunction under Sections 38 and 39 of Specific Relief Act, 1963 restraining defendant no.1-Allahabad Bank from honoring the letter of credits and for restraining defendant no.4 from taking action and making the payment thereunder. Alongwith suit, an application under Order 39 Rules 1 and 2 CPC was filed which was dismissed by the trial Court and affirmed by the Hon'ble Supreme Court.

The petitioner-defendant no.4 filed the application under Order 7 Rule 11 CPC as the suit was without cause of action, for, there was no contract between petitioner and Bank as Allahabad Bank was to honour the letter of credit in view of the demand raised by the petitioner.

The seller was defendant no.3 and buyer was plaintiff. The plaintiff during the pendency of suit, moved an application for amendment of the plaint by incorporating para 20-A of the plaint with regard to fraud and connivance of Negotiating Bank/defendant no.4 with defendants no.2 and 3.

Learned counsel appearing on behalf of the petitioner-defendant no.4 submitted that such type of suits are already held to be without cause of action in view of the law laid down by the Hon'ble Supreme Court in **Millenium Wires (P) Ltd and others vs. The State Trading Corporation of India Ltd. And others 2015(14) SCC 375**, wherein, it has been held that cause of action against Negotiating Bank would deem to have arisen only in two situations; namely that a fraud had been committed by the seller and the said fraud was to the knowledge of the

Negotiating Bank prior to the negotiation. The originally filed suit did not claim the element of fraud. In order to overcome and circumvent the order of this Court, amendment has been sought. The trial Court did not assign any reasons as to how and under what circumstances, application under Order 7 Rule 11 CPC was not maintainable and therefore, there is gross illegality and perversity.

I have heard the learned counsel for the petitioner and appraised the paper book.

The law with regard to maintainability of the suit in the absence of plea of fraud of is no longer res integra in view of the judgment dated 27.11.2018 passed by a Co-ordinate Bench of this Court in **CR No.3679 of 2016 titled as Malayan Banking Berhad Vs. Kay Vee Impex and others.** For the sake of brevity, relevant portion of the order dated 09.11.2016 reads thus:-

“8. I have considered the contradictory versions of contesting parties and deliberated over the arguments advanced in the light of legal provisions, submissions and circumstances.

9. The present application has been moved by defendant no.4/applicant for rejection of plaint on the ground that plaintiff has no valid cause of action to file the present suit. After considering entire aspects, I am of the considered view that whether plaintiff has any cause of action is purely a subject matter of evidence and can only be decided when the

parties shall lead their respective evidence. At this stage, no ground is made out for rejection of plaint.”

Allowing the application for amendment and dismissal of the application for rejection of plaint has created a very anomalous situation. It is a matter of fact that originally suit filed did not contain the element of fraud which could not have been substituted by amendment. The element “*figment of imagination*” cannot be ruled out.

Be that as it may, the order under challenge allowing the application for amendment and dismissing the application under Order 7 Rule 11 CPC is bereft of reasons and suffers from illegality, perversity and also without jurisdiction. The same is hereby set aside. The matter is remitted to the trial Court to decide the applications keeping in view the ratio decidendi culled out by the Hon'ble Supreme Court in Millenium Wires (P) Ltd.' case (supra) and as well as the arguments raised by learned counsel for the petitioner/defendant no.4, in accordance with law as expeditiously as possible.

The revision petitions stand allowed.

(AMIT RAWAL)
JUDGE

January 24, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No