

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

CR-3316-2017
Decided on : 29.11.2019

Shakti Kumar Goyal

..... Petitioner

Versus

Vipul Kumar Goyal and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Shagun Thapar, Advocate for
Mr. Namit Khurana, Advocate
for respondent No.1.

Manjari Nehru Kaul, J.

The instant petition has been filed for setting aside the order dated 18.04.2017 (Annexure P-8).

The petitioner (defendant No.2 in suit) has challenged the impugned order primarily on two counts. Firstly, learned court below erred while striking off the affidavit filed by the petitioner from evidence in spite of the fact that an application under Order 7 Rule 11 CPC which had been filed by the defendants was still pending. Hence, learned court below could not have proceeded with the trial without disposing off the said application. Learned counsel for the petitioner in support of his contention has placed reliance upon the judgment of Hon'ble Supreme Court in ***R.K.Roja vs. U.S.Rayudu and another, 2016(3) RCR (Civil) 810***. Secondly, once the matter had been adjourned to 29.04.2017 for filing reply to the application under Order 7 Rule 11 CPC and for arguments for which DWs had been summoned, hence, there was no necessity for the court to strike off the

petitioner's affidavit from record. It has also been submitted that the court erred in not appreciating that the petitioner had tendered his affidavit in the evidence only on 01.02.2017 and thereafter he remained hospitalised due to ill-health and hence, his non-appearance was neither intentional nor deliberate.

I have heard learned counsel for the parties and perused the case file.

I am afraid that the learned court below could not have struck off the affidavit of the petitioner as admittedly an application under Order 7 Rule 11 CPC was pending and as per the impugned order itself an opportunity had been given to respondent No.1 for filing reply against the said application. Hon'ble Supreme Court in *R.K.Roja's case(supra)* has also held that without disposing off an application under Order 7 Rule 11 CPC, a court cannot proceed with the trial.

Accordingly, the impugned order dated 18.04.2017 (Annexure P-8) is set aside and the revision petition stands allowed.

29.11.2019
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(MANJARI NEHRU KAUL)
JUDGE

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