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

**Civil Revision No.518 of 2017 (O&M)
Date of Decision: 29.05.2019**

**Spectrum Life Medical Device Private Limited
.....Petitioner**

Vs

**EMC Super Speciality Hospital Private Limited and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

Ms. Neha Dewan, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 01.11.2016 passed by the Civil Judge (Jr. Divn.) Amritsar vide which the application filed by the petitioner/defendant No.3 under Order 7 Rule 11 read with Section 151 CPC was dismissed.

[2]. Perusal of the record would show that the plaintiff/respondent No.1 filed a suit for permanent injunction restraining defendants No.1 and 2 from releasing the amount of Rs.9 lakhs from freezed account of the defendant

No.3/petitioner and further restraining defendants No.1 and 2 not to honour/encash the stolen cheques from a particular series and also for mandatory injunction directing respondent No.2 to re-transfer the amount of Rs.9 lakhs which was illegally transferred from the account of the plaintiff on the basis of stolen cheque in the account of defendant No.3/petitioner.

[3]. In para Nos.4 and 6 of the plaint, following pleadings were made by the plaintiff:-

- “4. That on 15.10.2015 in the evening, one message came on the mobile phone of Managing Director of the hospital having No.9814051296 from some female staff of defendant No.2 Punjab National Bank SMS facility that two cheques in question i.e. cheques bearing No.892655 and 892656 amount to Rs.4,50,000/- each were debited from the current account of the plaintiff having account No.3411002100037134 at Punjab National Bank, Branch Office, Queens Road, Amritsar.
6. That however, previously two years back, there was business dealing of plaintiff with defendant No.3 and taking benefit the above mentioned person of defendant No.3 was having easy access to the plaintiff hospital.”

[4]. The prayer clause of the plaint reads as under:-

- “18. It is, therefore, prayed that a decree with costs for permanent injunction restraining the defendant No.1 and 2 from releasing the amount of Rs.9,00,000/- from the freezed account of defendant No.3 having No.2406002100017070 and further restraining the defendant No.1 and 2 not to clear/honour/encash the

stolen cheques series number from 892795 to 892817 and for mandatory injunction directing the defendant No.2 to re-transfer the amount of Rs.9,00,000/- wrongly and illegally transferred from the account of plaintiff having No.3411002100037134 with defendant No.1 on the basis of stolen cheques bearing No.892655, 892656 to the account of defendant No.3 may be passed in favour of the plaintiff and against the defendants.

Any other relief to which the plaintiff is found entitled may also be granted in its favour.”

[5]. Evidently, the plaintiff has filed a suit for permanent injunction restraining the defendants No.1 and 2 from releasing the amount of Rs.9 lakhs from the freezed account of the petitioner. The plaintiff has also sought to restrain the defendants No.1 and 2 not to encash the other cheques and also for mandatory injunction directing the Bank to re-transfer the amount of Rs.9 lakhs which was wrongly credited in the account of the petitioner. In a way, the plaintiff seeks to recover the amount in question by way of making illusion in the pleadings so as to avoid payment of *ad valorem* court fee in a suit for recovery

[6]. Plaintiff cannot restrain the defendants in perpetuity. The substantive prayer has been made by the plaintiff for recovery of amount of Rs.9 lakhs which was wrongly credited in the account of the petitioner. When efficacious remedy in the form of suit for recovery is available to the plaintiff, the filing of

suit for mandatory injunction would be hit by Section 41(h) of the Specific Relief Act.

[7]. It appears that in order to avoid payment of court fee, a suit for mandatory injunction has been filed. In the present set of circumstances only a suit for recovery is maintainable and the plaintiff ought to have affixed *ad valorem* court fee in order to maintain such suit.

[8]. Since no suit for recovery has been filed, therefore, in my considered opinion, the suit in question is hit by Section 41(h) of the Specific Relief Act. The plaint has been cleverly drafted and the Court is bound to unveil the curtain in order to find out the real issue involved in the litigation.

[9]. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 01.11.2016 passed by the Civil Judge (Jr. Divn.) Amritsar and allow the revision petition. Ordered accordingly. Resultantly, the plaint is ordered to be rejected. Normal consequences to follow.

May 29, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No