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

**Civil Revision No.6106 of 2017 (O&M)
Date of Decision: 23.09.2019**

**M/S MAHAVIR PACKAGING INDUSTRIES & ANR
.....Petitioners**

Vs

**SATYAVIR SHARMA AND ANR
....Respondents**

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

Present:Mr. Kunal Dawar , Advocate
for the petitioners.

Mr. Naveen S. Bhardwaj, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have laid challenge to the order dated 17.07.2017 passed by the Addl. Civil Judge (Sr. Divn.) Gurugram, vide which the application under Order 7 Rule 11 CPC filed by the petitioners/defendants for rejection of plaint was dismissed.

[2]. In brief, a suit for possession by way of mandatory injunction has been filed by the plaintiff/respondent No.1 after terminating the licence in favour of defendants/petitioners.

[3]. Learned counsel for the petitioners submitted that the the real intention of the plaintiff is to be seen. If the clever

drafting of the plaint has caused illusion in respect of cause of action, it would be the duty of the Court to see real intention of the plaintiff after terminating the licence of the defendants. Though the entry of the defendants in the suit property was by way of permissive mode, but on termination of the licence, their status would be that of trespasser with a protection to be evicted in due course of law.

[4]. As against this, learned counsel for respondent No.1 submitted that at the stage of consideration of application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The maintainability of the suit for possession by way of mandatory injunction on the strength of **Jagdish vs. Brij Jal, 2006(4) R.C.R. (Civil) 777** can be appreciated, wherein the Hon'ble High Court has held that such suit is maintainable. In **Sri Rathnavarmaraja vs. Smt. Vimla, 1961 AIR (SC) 1299**, the Hon'ble Apex Court has held that the issue of court fee is between the plaintiff and the Court or State, the defendant has no right to move superior courts by way of appeal or revision.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. In pith and substance, the relief claimed is for possession of demised property and in order to evade payment of *ad valorem* court fee, the suit has been designed in a way to

seek possession by way of mandatory injunction after terminating the alleged licence. The independent suit filed by the petitioners on the basis of title is pending consideration before the trial Court. Even the petitioners being defendants have also set up a counter claim in the present suit.

[7]. All these things would give rise to triable issues and in such eventuality, a contingent decree can be passed by the trial Court that in the event of finding that the plaintiff is liable to affix *ad valorem* court fee, the trial Court can direct the plaintiff to make good the deficiency in court fee by way of passing a contingent/conditional decree.

[8]. With the aforesaid observations, this revision petition is disposed of.

September 23, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No