

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

CR-7695-2015

Date of decision: 27.11.2019

**Haryana Dairy Development Corporation Federation Limited and
another**

....Petitioners

V/s.

Karan Singh and others

....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. R.L.Lohan, Advocate,
for the petitioners.

Mr. C.B. Goel, Advocate with
Ms. Divya Mahlawat, Advocate,
for respondent Nos. 1, 2(i) to 2(iii), 3 to 5 and
6(i), 7, 9 & 10 (i).

Sanjay Kumar, J. (ORAL)

Haryana Dairy Development Co-operative Federation Limited and The Hisar-Jind Co-operative Milk Producer Union Limited Jind, the defendants in CS No. RBT-CS-48 of 17.09.2013 on the file of the learned Civil Judge (Junior Division), Jind (hereinafter, 'the trial Court'), are the petitioners in this revision filed under Article 227 of the Constitution. They are aggrieved by the order dated 26.08.2015 passed by the trial Court dismissing their application filed under Order 7 Rule 11 CPC seeking rejection of the plaint.

By order dated 18.11.2015 passed in this revision, this Court stayed further proceedings before the trial Court.

Parties shall hereinafter be referred to as arrayed in the suit.

The subject suit was filed by the respondents herein for a declaration that they were entitled to certain service benefits and for a mandatory injunction to the defendants to extend the same to them. Certain Government instructions dated 23.08.1990 and 09.08.2010 were relied upon by them in this regard.

While so, the defendants in the suit, the petitioners herein, filed the subject application under Order 7 Rule 11 CPC on the ground that the instructions relied upon by the plaintiffs had been withdrawn by the Government of Haryana, vide 'Haryana (Abolition of Distinction of Pay Scale Between Technical and Non-Technical Posts) Ordinance 2013' and therefore, the cause in the suit no longer survived. The trial Court was however not persuaded to agree. Perusal of the order under revision reflects that the trial Court found that the plaint averments disclosed a cause of action and the issue raised required examination and could not be decided summarily. It is on this basis that the trial Court dismissed the subject application.

Order 7 Rule 11(a) CPC states that the plaint is liable to be rejected in the event it does not disclose a cause of action. It is well settled that only the plaint and the documents filed therewith can be examined for the purpose of ascertaining as to whether the suit/plaint discloses a cause of action. It would not be open to the trial Court at that stage to look into any document produced by the defendant or defendants in the suit. Reference in this regard may be made to the judgment of the Supreme Court in ***Mayar (H.K.) Limited and others***

V/s. Owners and Parties, Vessel M.V. Fortune Express and others

[2006 AIR (SC) 1828], wherein it was held that the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, the said plaint cannot be rejected by exercise of power under Order 7 Rule 11 CPC. It was further held that the plaint cannot be rejected on the basis of the allegations made by the defendants. It is therefore clear that the trial Court could not have considered the Ordinance sought to be relied upon by the defendants to ascertain as to whether the plaint disclosed a cause of action. Even if the Ordinance had any relevance, it could only be considered during the suit proceedings at a later stage and not by way of an application under Order 7 Rule 11(a) CPC. This Court therefore finds no ground to interfere with the order under revision. The civil revision is devoid of merit and is accordingly dismissed.

Interim order dated 18.11.2015 shall stand vacated.

No order as to costs.

Parties shall appear before the trial Court on 10.12.2019.

(SANJAY KUMAR)
JUDGE

27.11.2019

rakesh

whether speaking/non speaking
whether reportable/non reportable

yes/no
yes/no