

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

120

CR-5941-2019 (O&M)
Date of Decision : 20.09.2019

Ridge Crafts Homes Private Limited

.... Petitioner

Versus

Resident Welfare Association (Regd.) and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Adarsh Jain, Advocate
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India, challenge has been laid to order dated 03.09.2019, whereby trial Court rejected the request of petitioner to decide its application under Order 7 Rule 11 CPC, prior to deciding injunction application of the respondent No.1-plaintiff.

Briefly, respondent No.1-plaintiff filed a suit alongwith an application for temporary injunction against the petitioner and five others for declaration and permanent injunction to restrain them from demolishing disputed road left by their builders for their ingress and egress, from whom they had purchased independent floors.

Upon notice, petitioner-defendant No.6 moved an

application under Order 7 Rule 11 CPC for rejection of plaint. It was argued by its counsel that its application under Order 7 Rule 11 CPC may kindly be decided prior to decision on the application for temporary injunction of the respondent-plaintiff, inasmuch as, in two earlier suits filed by respondent-plaintiff, no injunction was granted to it. The trial Court rejected the aforesaid request of petitioner and ordered for decision on injunction application of the respondent-plaintiff, before taking any decision on its application under Order 7 Rule 11 CPC.

Learned counsel for the petitioner relying upon the judgments of Hon'ble Apex Court in **R.K.Roja vs. U.S.Raydu and another, (2016) 14 SCC 275, Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others, (2004) 3 SCC 137** and the judgment of this Court in **Sugan Singh vs. Emerson Information Technology Solutions and another, 2018(2) PLR 728** contends that trial Court failed to appreciate that suit of the respondent-plaintiff was not maintainable, inasmuch as, no injunction was granted in two earlier suits filed by it. Therefore, the present suit filed without any fresh cause of action was not maintainable. Trial Court failed to appreciate that proceeding further with the suit before deciding its application under Order 7 Rule 11 CPC was a futile exercise.

Having given thoughtful consideration to the

submissions made by learned counsel for the petitioner, the instant revision merits dismissal for the reasons to follow.

No prejudice has been caused to legal rights of the petitioner in case, the learned trial Court has deferred the decision upon its application under Order 7 Rule 11 CPC. The trial Court considering the emergent nature of the case as pleaded by the respondent-plaintiff has simply ordered to deal with the injunction application of the respondent-plaintiff, prior to adjudication of the application under Order 7 Rule 11 CPC of the petitioner.

The facts and circumstances of the judgment relied upon by learned counsel for the petitioner are not identical to the facts of the instant case. Therefore, no benefit whatsoever of the same can be given to the petitioner.

Dismissed.

However, the trial Court is directed to decide the application of the petitioner immediately after taking decision on the injunction application of the respondent-plaintiff, before proceeding further in the matter.

September 20, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No