

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2381 of 2020

Date of Decision : 15.10.2020

Raj Kumari Kapoor and another

...Petitioners

Versus

Shashi Narula

...Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Bakshi, Advocate,
for the petitioners.

Harsimran Singh Sethi, J. (Oral)

The present civil revision petition has been filed challenging the order dated 14.02.2020 (Annexure P-6) passed by the Civil Judge (Junior Division) Gurugram, by which the application filed by the petitioners under Order 7 Rule 11 of CPC has been rejected.

Learned counsel for the petitioners argues that the present suit is not maintainable keeping in view the pleadings, which have been made in the suit. Learned counsel for the petitioners further submits that once, it has been admitted in the suit that suit property was purchased in the year 2001, the same should be treated as 10 years old, hence, the present civil suit is barred and only the petition before the Rent Controller under Haryana Urban (Control of Rent & Eviction) Act, 1973 was maintainable.

Learned counsel for the petitioners though, concedes that there

is no averment in the suit which proves that the property in question was constructed and is in use for the last more than 10 years.

Learned counsel for the petitioners has argued that once the property was purchased in year 2001, invariably it has to be treated that the construction of the property was 10 years old unless and until there is an averment to disprove the said fact.

Whether the construction is 10 years old or not is a matter of fact, which will be proved during the evidence. Once, it is conceded by learned counsel for the petitioners that from the plain reading of pleadings, it cannot be held that the construction of the suit property was more than 10 years old, no relief can be granted to the petitioners in respect of the application filed by the petitioners for dismissal of the suit under Order 7 Rule 11 of CPC. The present application has been filed by the petitioner on the basis of assumption being derived from the pleadings that once the property was purchased in the year 2001, it must have been constructed and occupied immediately thereafter. The suit cannot be dismissed merely on the basis of the assumptions.

Further, in respect of the argument that to invoke the jurisdiction of the civil Court, the petitioners should have made the averment that the construction is less than 10 years old, even if the said averment is missing, still the said fact can be proved by way of an evidence during the trial. It is the case of the petitioner that in view of the ambiguous averments in the petition, the interpretation being forwarded by the petitioner, should be accepted to dismiss the suit, which cannot be accepted as the said fact can be proved by the petitioner by leading the appropriate evidence during the trial.

It is a settled principle of law that for deciding an application under Order 7 Rule 11 of CPC, only the averments made in the plaint are to be taken into account. It is conceded by learned counsel for the petitioners that there is no averment in the plaint, which shows that the construction was more than 10 years old with regard to the suit property so as to oust the jurisdiction of the Civil Court. Application filed by the petitioner under Order 7 Rule 11 of CPC is on the basis of the presumption, which is being drawn by learned counsel for the petitioners, that as the suit property has been purchased in the year 2001, the construction must be 10 years old. Once, there is no definite averment in the suit, which bars the jurisdiction of the Civil Court, no relief can be granted to the petitioners by exercising power of dismissing the suit by accepting the prayer of the petitioners in respect of the application filed under Order 7 Rule 11 of CPC.

Further, the consequences of accepting of the application under Order 7 Rule 11 of CPC are drastic, the Court have to be strict while considering the prayer of a party for dismissal of the suit outrightly. The Court has to arrive at a definite conclusion that on the basis of the pleadings in the suit, the suit is not maintainable. The interpretation of the averment in a particular manner is not permissible. On the plain reading of the averments in the suit, the conclusion of non-maintainability of the suit has to be arrived at. In the present case, the prayer of the petitioners is that the Court should assume that once the suit property was purchased in the year 2001, the same was constructed and occupied for the last more than 10 years, which is not at all permissible. In the facts and circumstances of this case, the prayer of the petitioners cannot be accepted at present stage for the dismissal of the suit under Order 7 Rule 11 of CPC.

No ground to interfere with the order dated 14.02.2020
(Annexure P-6) passed by the Civil Judge (Junior Division) Gurugram is
made out.

Dismissed.

October 15, 2020

aarti/naresh k.

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No