

103-A

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

CR No.490 of 2021 (O&M)
DATE OF DECISION : 16.03.2021

Joginder LalPetitioner

versus

Jagdeep Singh GhangasRespondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Arun Singal, Advocate for the petitioner

ALKA SARIN, J.:

Heard through physical hearing.

The present revision petition has been filed challenging the order dated 14.01.2020 dismissing the application filed by the petitioner under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for rejection of the ejectment petition filed by the respondent.

The facts relevant to the present *lis* are that in September 2018 the respondent filed an ejectment petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for eviction of the petitioner from Shop No.16, part of land measuring 3 Biswas i.e. 150

square yards comprised in Khewat No.1086 Khatoni No.1513, Khasra Nos.3585/16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29 situated in Patti Rajputan within the limits of Municipal Corporation No.5092, Panipat, known as Gandhi Mandi, Panipat. The respondent claimed himself as landlord and sought the eviction of the petitioner (tenant) *inter-alia* on the grounds of arrears of rent, personal necessity for running Advocate's office as also on the ground that the shop in question was more than 60 years old and the petitioner was not keeping it clean and never cared for white-washing etc. and the respondent wanted to reconstruct the same and convert it into his office.

The petitioner put in appearance before the Rent Controller and filed an application (Annexure P-2) under Order 7 Rule 11 read with Section 151 CPC for rejection of the ejectment petition on the ground that the respondent is not the owner of the demised shop on the basis of the sale deed (Annexure P-4) and that the respondent had no right, title or interest in the demised shop and that there was no relationship of landlord and tenant between the parties. It was also averred in the application that the sale deed (Annexure P-4) did not disclose the demised shop and infact pertained to a house. It was further stated in the application that the father of the petitioner had taken the demised shop from the Jain Sanstha in the year 1983 and that after the death of the father on 05.04.1996 a partition had taken place between the petitioner and his brothers, namely, Ram Parkash and Madan Lal and the demised shop fell in the lot of the petitioner. Thereafter, the petitioner applied for an electric connection in his own name and the electric connection was also issued by the Nigam in

his name for which he has regularly been paying the electricity charges since 1996 and running his shop in the name and style of JL Tyre Works. It was also averred that the petitioner has paid taxes to the Municipal Corporation, Panipat up to 1998-1999. It was further averred in the application that the ejectment petition was a counter-blast to the civil suit filed by the petitioner. The respondent filed a reply (Annexure P-3) to the application filed by the petitioner and contested the same. Vide the impugned order dated 14.01.2020 the application (Annexure P-2) was dismissed by the Rent Controller holding inter-alia that *“Perusal of above mentioned sale deed transpires that the property mentioned in the same is the one of which the petitioner has filed the present petition against the respondent/applicant. Merely because the suit property is described as house in the said sale deed instead of disputed shop is no ground to reject the plaint under Order 7 Rule 11 CPC as first of all this is no ground to reject any plaint under this clause”*. The Rent Controller further held that if the petitioner used to pay rent to the Jain Sanstha then after the demised shop had been sold by the Jain Sanstha to the respondent then the petitioner came under the tenancy of the respondent. Hence, the present civil revision petition.

The learned counsel for the petitioner would contend that the ejectment petition has been filed qua Shop No.16, part of land measuring 3 Biswas i.e. 150 square yards comprised in Khewat No.1086 Khatoni No.1513 Khasra Nos.3585/16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29 situated in Patti Rajputan within the limits of Municipal Corporation No.5092, Panipat, known as Gandhi Mandi, Panipat whereas the sale deed

(Annexure P-4) vide which the respondent is staking his title over the demised shop mentions the property sold as a house and, therefore, the respondent is neither the owner nor landlord of the demised shop.

I have heard the learned counsel for the petitioner and with his assistance have gone through the contents of the file.

As per Order 7 Rule 11 CPC, a plaint is liable to be rejected in the following cases :

- “(a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of Rule 9.”*

It is well settled that the relevant facts which need to be looked into for deciding an application filed under Order 7 Rule 11 CPC are the averments in the plaint, only the averments in the plaint are germane.

Where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the Court has no other option except to reject the same. In order to consider Order 7 Rule 11 CPC, the Court has to look into the averments in the plaint and the same can be exercised by the Trial Court at any stage of the suit. It is also settled that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law.

Keeping in mind the well settled legal position, this Court is satisfied that the averments in the ejectment petition (Annexure P-1), as filed by the respondent, do not warrant invocation of the provisions of Order 7 Rule 11 CPC. The respondent has unambiguously averred that after sale of the property in his favour he has become landlord and owner and that there exists relationship of landlord and tenant between the parties. This is what has to be seen by the Rent Controller while entertaining an ejectment petition. The grounds on which the petitioner is seeking rejection of the ejectment petition in the present case are a matter of evidence and are not germane for deciding the application filed by him under Order 7 Rule 11 CPC. Moreover, the details of the khasra numbers etc. as

mentioned in the ejectment petition (Annexure P-1) tally with those mentioned in the sale deed (Annexure P-4) in favour of the respondent. Though the property in the sale deed (Annexure P-4) has been described as a house, however, the learned counsel for the petitioner is not able to deny the fact that the description of the property is identical in both the sale deed (Annexure P-4) as well as the ejectment petition (Annexure P-1). Thus, if at all, the petitioner is raising a dispute about the same then that has to be proven after leading evidence. The rejection of the plaint at the threshold entails very serious consequences. This power has to be used in exceptional circumstances and should be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The application (Annexure P-2) filed by the petitioner does not satisfy the requirements of Order 7 Rule 11 CPC.

In view of the above, the present civil revision petition is devoid of any merit and is dismissed. It is, however, made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

(ALKA SARIN)
JUDGE

16.03.2021
Parkash

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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