

CM-2245-CII-2021

in/and CR-3917-2017(O&M)

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

CM-2245-CII-2021

in/and

CR-3917-2017(O&M)

Date of decision:22.03.2021

Sunita Devi and others

.....Petitioners

Versus

Sukbir Chander and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sawan Choudhary, Advocate for the petitioners

ANIL KSHETARPAL, J.

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After hearing learned counsel for the applicants and going through the contents of the application, the same is allowed. The revision petition is restored to its original number.

Main case

With the consent of the learned counsel for the petitioners, the revision petition is taken on Board for final disposal.

Through this revision petition filed under Article 227 of the Constitution of India, the petitioners (defendants) in the suit pray for quashing of the order dated 08.02.2017 passed by the Civil Judge, (Senior Division), Saffidon, District Jind, dismissing the application under Section 11 CPC.

The defendants claim that the suit in question is barred by the doctrine of res-judicata. Learned trial court after noticing the facts has found that the principle of res-judicata is not applicable.

Learned counsel representing the petitioners was requested to explain as to how an application under Section 11 CPC was maintainable. He submits that the defendants cannot be forced to defend the suit till the end. Section 11 of the Code of Civil Procedure, 1908, provides that

“no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

The question as to whether the subsequent suit is barred by principle of res judicata depends upon the evidence to be led by the parties. Still further, Section 11 does not provide for filing of any such application.

Keeping in view the aforesaid facts, the revision petition is disposed of with an observation that the defendants-petitioners would be at liberty to request the court to frame an issue on the question of res judicata and lead evidence to prove its application.

Needless to observe that since the application itself was not

maintainable, therefore, the order passed upon it by the court on 08.02.2017 will not be binding and the court while determining the issues shall independently decide upon the issue of res-judicata without being influenced by the order impugned herein.

With these observations, the revision petition is disposed of.

22.03.2021

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes /No

Yes / No