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

CR-982-2022 (O&M)

Date of Decision : 29.11.2022

Gymkhana Club and Others

....Petitioners

VERSUS

Tarun Awasthi

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravinder Malik, Advocate for the petitioners.

Mr. Naveen Sharma, Advocate, for the respondent.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 18.02.2022 whereby the application under Order 7 Rule 11 CPC has been dismissed by the Trial Court.

Learned counsel for the defendant-petitioners would contend that the services of the plaintiff-respondent stood terminated vide order dated 07.11.2019, which has not been challenged in the present suit.

Per contra, learned counsel for the plaintiff-respondent has contended that only the contents of the plaint are to be seen at the time of deciding an application under Order 7 Rule 11 CPC and from the perusal of the plaint it was not made out that the services of the plaintiff-respondent stood terminated on 07.11.2019 and hence this question could not be gone into in the application under Order 7 Rule 11 CPC.

It is trite that at the time of deciding an application under Order 7 Rule 11 CPC only the contents of the plaint are to be seen. Neither the contents of the written statement, if any, nor the contents of the application can be looked into and considered while dealing with an application under Order 7 Rule 11 CPC.

From a perusal of the plaint, which has been appended with the revision petition as Annexure P-7, the contention as raised by the learned counsel for the defendant-petitioners is not made out. That being so, the application under Order 7 Rule 11 CPC has rightly been rejected by the Trial Court. Further it has been noted in the impugned order that the letter dated 07.11.2019 allegedly dispensing with the services of the plaintiff-respondent was addressed to the Administrator-cum-Vice President Gymkhana Club, HSVP, Rohtak. The said letter was not addressed to the plaintiff-respondent. The letter was not even sent by the Chief-Administrator, HSVP, Panchkula to the plaintiff-respondent. On 14.11.2019 the Trial Court passed a restraint order against the defendant-petitioners from imposing any penalty on the basis of the enquiry in progress. On 14.11.2019 itself the letter dated 14.11.2019 was forwarded by the Administrator-cum-Vice President, Gymkhana Club, HSVP, Rohtak to the plaintiff-respondent. It has further been noticed that at the time of passing of the interim order, the fact that the services of the plaintiff-respondent had been dispensed with vide order dated 07.11.2019 was not pointed out to the Court.

Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. vs. Shamalji Oddhavji Thakkar & Ors. [AIR 2021 SC 5212]** has held as under :

“10. Insofar as the rejection of plaint on the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. It is the case of the appellants/plaintiffs that only after making inspection of the records in connection with the suit land available in the office of defendant No.3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before the ALT were collusive, fraudulent and null and void. The appellants/plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.”

In case of **Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.** [2018(5) RCR (Civil) 163] the Supreme Court held as under :

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to

challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and

declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

Further in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]** it has been held as under :

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.”

In view of the law laid down by the Hon’ble Supreme Court as well as on a meaningful reading of the plaint, it cannot be said that there is no cause of action.

In view of the discussion above, I do not find any illegality or infirmity in the impugned order dated 18.02.2022 (Annexure P-12) passed

by the Trial Court. There is no merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

November 29, 2022

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(ALKA SARIN)

JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO