

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

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**CR-2588-2022
Decided on : 11.07.2022**

Krishan Singh

... Petitioner(s)

Versus

Tajinder Pal Singh

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Vivek K. Thakur, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

The petitioner/defendant is seeking the setting aside of the order dated 13th May, 2022 (Annexure P-9), passed by Civil Judge (Jr. Divn.), Jalandhar, vide which his application filed under Order 7 Rule 11 read with Section 151 CPC, was dismissed.

Learned counsel while inviting the attention of this Court to Annexure P-5, submits that in fact the instant suit had been instituted by the respondent/plaintiff with an oblique motive to avoid his legal liability in the criminal proceedings initiated by the petitioner against him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'). Learned counsel for the petitioner submits that while passing the impugned order, the Court below failed to appreciate that the loan availed of by the respondent/plaintiff was not repaid and even the cheques issued by him were dishonored as was evident from the return memos of the Bank (annexed as Annexure P-3). Learned counsel still further submits that a bare perusal of the prayer clause, which is reproduced herein under, leaves no manner of doubt that the relief claimed therein cannot be granted to the respondent/plaintiff:-

“SUIT FOR PERMANENT INJUNCTION restraining the defendant, his heirs, assignee, attorneys, representatives from threatening to commit suicide and harassing the plaintiff and his family members on account of the loan taken by the plaintiff which the plaintiff has already returned back with upto date interest to the defendant and as such there is no outstanding amount towards the plaintiff on account of the above said loan.

AND

With a consequential relief of MANDATORY INJUNCTION directing the defendant, his heirs and attorneys to return back the documents i.e. sale deed, Pronote dated 25.11.2020, agreement dated 05.12.2018, agreement dated 22.04.2021 and original cheques (9 leaves) which were taken as security by the defendant against the above said loan.”

In support of his submissions, learned counsel has placed reliance upon the judgments of the Apex Court in **Rajendra Bajjoria and others Vs. Hemant Kumar Jalan and others [Civil Appeal Nos. 5819-5822 of 2021 (Arising out of SLP(C) Nos. 2779-2782 of 2019)]**, D/d 21.09.2021 (Law Finder Doc ID # 1883999) and **K. Akbar Ali Vs. K. Umar Khan & Ors. [SLP (C) No. 31844 of 2018]**, D/d 12.02.2021 (Law Finder Doc ID # 1812823).

I have heard learned counsel for the petitioner and perused the relevant material on record.

It would be relevant to observe here that the underlying object behind the provisions of Order 7 Rule 11 CPC, is to check frivolous/sham litigation, so as to prevent wastage of judicial time. While adjudicating

upon, an application under Order 7 Rule 11 CPC, for rejection of plaint, a Court has to restrict its inquiry to the averments made in the plaint, which in turn have to be read in conjunction with the documents relied upon by the plaintiff. It would also be apposite to note that a plaint cannot be rejected merely on a partial perusal of the plaint, rather, a meaningful reading of the plaint in its entirety, would be necessary to arrive at a conclusion as to whether or not, the plaint deserves to be rejected. At the stage of deciding of an application under Order 7 Rule 11 CPC, the defense of the defendant cannot be taken into consideration.

Adverting to the case in hand, on a perusal of the plaint (Annexure P-6), it cannot be said that the averments made therein do not reveal any cause of action, much less, it being a sham litigation, which would deserve to be thrown out at the very outset.

The respondent/plaintiff has raised triable issues therein and the question as to whether loan stands repaid or not would be a matter of trial. Furthermore, whether the suit in question had been instituted by the respondent/plaintiff merely to avoid the liability in the criminal proceedings initiated by the petitioner/defendant under Section 138 of the NI Act, cannot be considered and looked into at this stage being the defence of the petitioner/defendant. Needless to add, the petitioner would always be at liberty to raise all the pleas in his defence at the appropriate stage during trial.

The case laws relied upon by the petitioner/defendant does not come to his rescue, as Hon'ble Supreme Court in **Rajendra Bajoria's case** (supra) and **K. Akbar Ali's case** (supra), has held that only the averments made in the plaint are to be considered along with the documents relied

upon by the plaintiff while deciding an application under Order 7 Rule 11 CPC and still further, defence of the defendant cannot be looked into at this stage.

This Court in the aforementioned facts and circumstances is not inclined to exercise its jurisdiction under Article 227 of the Constitution of India. Accordingly, the instant revision petition is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 11, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*