

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117

CR No.3696 of 2022

Date of Decision : 07.09.2022

M/s Om Shakti Enterprises, Safidon & Anr.

....Petitioners

VERSUS

Pushpa Rani

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Kumar Garg, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 23.08.2022 passed by the Trial Court dismissing the application filed by the defendant-petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC').

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for possession in respect of *Gair Mumkin* Shop and Godown marked as 'ABCD' shown in red colour in the site plan bounded as under :

East : 88'-3" shop of Ishwar & plot of Azad Singh

West : 88'-3" Property of Partap

North : 27'-8" Jind Road,

South : 27'-8" Property of plaintiff

situated on Jind Road, Safidon and in the revenue estate of Village Singhpura, Tehsil and District Jind.

The defendant-petitioners filed an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the present suit was not maintainable inasmuch as the provisions of the Haryana Urban

(Control of Rent and Eviction) Act, 1973 (for short the 'Act') would be applicable as the property falls within the limits of an urban area as well as municipal limits of Municipal Committee, Safidon. The said application was contested by the plaintiff-respondent. The application under VII Rule 11 CPC came to be dismissed vide the impugned order dated 23.08.2022. Hence, the present revision petition.

The only argument raised by learned counsel for the defendant-petitioners is that the shop in question has been in existence for the last more than ten years before the filing of the suit and, hence, the exemption available under Section 1(3) of the Act would not be available. Learned counsel for the defendant-petitioners on a pointed query put by the Court as to whether the said fact is discernible from a perusal of the plaint, has candidly admitted that the said fact was not discernible from the contents of the plaint. However, he relies upon the sale deed dated 27.07.2010 to contend that in the sale deed there is a mention of existence of the shop in question and, hence, it ought to be presumed that a period of ten years has elapsed and hence the suit would not be maintainable.

I have heard learned counsel for the defendant-petitioners.

It is trite that on an application under Order VII Rule 11 CPC only the contents of the plaint along with the documents filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejecting the plaint under Order VII Rule 11 CPC. The Court while exercising powers under Order VII Rule 11 CPC is required to see whether the averments as made in the plaint are contrary to

statutory law or barred by any law and whether a case is made out for rejecting the plaint at the very threshold. On a meaningful reading of the plaint, if it is found that the same is vexatious and does not disclose any right to sue or is barred by any law, the Court would exercise its power under Order VII Rule 11 CPC. It has been held by the Supreme Court in the case of **Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi [2019(1) RCR (Civil) 366]** 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 the present case, from a perusal of the plaint it is not discernible as to when the construction of the demised premises was carried

out. The reliance of learned counsel for the defendant-petitioners on the sale deed dated 27.07.2010, appended with the plaint, would also be of no avail inasmuch as all that can be said from a perusal of the sale deed was that in 2010 the shop was in existence. The present suit has been filed in the year 2019 i.e. still within a period of ten years. Hence, it cannot, at this stage be ascertained as to whether the provisions of the Act are applicable and as to whether the present suit would be maintainable or not.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The present revision petition being devoid of any merits is dismissed. Pending applications, if any, also stand disposed off.

07.09.2022
jk

(ALKA SARIN)
JUDGE

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