

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

112

CR No.3290 of 2021 (O&M)
DATE OF DECISION : 28th FEBRUARY, 2022

Balbir Goel and another

.... Petitioners

Versus

Ajay Goel

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Vijay Rana, Advocate,
for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

CM-1818-CII-2022

This is an application for placing on record the list of documents produced before the trial Court by the plaintiff/present respondent i.e. Annexure P-7 and the certified copy of Partnership Deed i.e. Annexure P-2.

For the reasons mentioned in the application, the same is allowed. The documents are taken on record as Annexures P-2 and P-7.

Main Case

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 10.11.2021 (Annexure P-6) passed by the Civil Judge (Junior Division), Jalandhar (for short, the trial Court), whereby the application filed by the

petitioners under Order 7 Rule 11 of CPC read with Section 8 of the Arbitration and Conciliation Act, 1996 for rejection of plaint has been dismissed.

It is submitted by the counsel for the petitioners that the application filed by the petitioners under Order 7 Rule 11 of CPC has wrongly been dismissed by the trial Court by taking recourse to the law relating to the arbitration. The counsel has further submitted that the application was filed under the provisions of CPC, therefore, the same should have been decided with reference to the law relating to the provisions as contained in Order 7 Rule 11 CPC. Hence, the order passed by the trial Court is illegal.

Having heard the counsel for the petitioners and having perused the case file, this Court does not find any substance in the argument of the counsel for the petitioners. Order 7 Rule 11 CPC contemplates the rejection of the plaint on the ground of non-disclosure of cause of action, bar against the suit or for non-payment of appropriate Court fees. In the application moved by the petitioners, none of these situations are claimed to be existing in the present case. A bare perusal of the application filed by the petitioners before the trial Court shows that they have not even pleaded that the cause of action is not disclosed in the plaint. Rather, their entire emphasis is that the subject-matter involved in the suit was referable to the arbitration, therefore, the suit be dismissed. However, the suit as such cannot be dismissed only because there had been an arbitration clause between the parties.

Although, in the application moved before the trial Court, the petitioners had highlighted the arbitration clause, however, they had

not even made a prayer before the trial Court to refer the matter to the arbitration. On the contrary, their effort is to get the suit dismissed on account of existence of an arbitration clause and then to avoid even going to the Arbitration. This kind of situation is not permissible in law. Moreover, the trial Court has recorded in the impugned order that the petitioners had availed several opportunities for filing the written statement. Only after wasting sufficient time, it had occurred to the petitioners that there existed an arbitration clause. Hence, invoking of the arbitration clause in the present case is nothing but an excuse to prolong filing of the written statement. Otherwise, there was nothing to stop the petitioners from making prayer to the Court to refer the dispute to the Arbitrator. The application filed by the petitioners is singularly silent qua that prayer. Furthermore, since the petitioners have themselves brought in the issue of the arbitration clause, therefore, no fault can be found with the order passed by the trial Court in so far as that Court has referred to the law relating to the arbitration.

In view of the above, finding no merit in the present petition, the same is dismissed.

28th FEBRUARY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*