

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

107

**Civil Revision No.5538 of 2022
Date of Decision: 30th November, 2022**

Pooja Gupta

...Petitioner

Versus

Lov Gupta & Another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Kamal K. Chaudhary, Advocate,
for the petitioner.

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MEENAKSHI I. MEHTA, J.(ORAL)

By way of the instant petition, the petitioner-defendant No.2 (here-in-after to be referred as 'defendant No.2') has laid challenge to the order dated 24.05.2022 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division) Chandigarh (for short 'the trial Court'), whereby the application (Annexure P-3) moved by her under Order 7 Rule 11 CPC for seeking the rejection of the plaint qua her, in Civil Suit No.CJ-195 of 2019 filed by respondent No.1-plaintiff (here-in-after to be referred as 'the plaintiff') against her as well as respondent No.2-defendant No.1 (for short 'defendant No.1'), has been dismissed.

2. I have heard learned counsel for the petitioner-defendant No.2, at the preliminary stage, in the present petition and have also gone through the file carefully.

3. Learned counsel for defendant No.2 contends that defendant No.2 was not a party to the Memorandum of Understanding (Annexure P-7) pertaining to the suit property and rather, the same had been executed between the plaintiff and defendant No.1 and even otherwise, this MOU was agreed to become effective from 10.01.2015 whereas defendant No.2 had resigned from the partnership in M/s Star Kitchen w.e.f. 31.12.2014 vide Partnership-cum-Retirement Deed Annexure P-6 and therefore, the plaintiff had no occasion to file the said Civil Suit against her (defendant No.2) and in these circumstances, it is explicit that the impugned order is not legally sustainable and hence, the same deserves to be set aside.

4. However, I do not find the above-raised contentions to be tenable because a perusal of the MOU Annexure P-7 reveals that defendant No.1 had executed the same as the General Manager of M/s Star Kitchen and the Partnership-cum-Retirement Deed, i.e Annexure P-6, itself speaks volumes of the fact that defendant No.2 had remained a partner in the said Partnership Concern and there is nothing on the record, at this stage, to show that she had intimated any competent Authority regarding the factum of her retirement from the said Concern or had ever informed the plaintiff in respect thereof. Even otherwise, the validity and genuineness of the said Deed (Annexure P-6) would be a subject matter for consideration and adjudication by the trial Court at the appropriate stage, in view of the evidence that may be led on the record by the parties in this regard and the same cannot be ascertained/determined at the stage of deciding the instant revision petition.

5. To cap it all, the Apex Court has specifically observed in **Madhav Prasad Aggarwal & Anr. Vs. Axis Bank Ltd & Anr. 2019(3) R.C.R. (Civil) 510** that “*the plaint can either be rejected as a whole or not at all and the relief of rejection of plaint in exercise of powers under Order 7, Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendants*”. In view of these observations, it becomes clear that the trial Court has rightly declined the relief, as sought by defendant No.2 in the above-mentioned application.

6. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

30.11.2022
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes