

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(231)

CR-111-2016 (O&M)

Date of Decision : 15.05.2023

Atul Kumar Goyal

...Petitioner

Versus

Manoj Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagdish Manchanda, Advocate with
Mr. Nischal Chetanya Manchanda, Advocate for the petitioner.

Mr. Mani Ram Verma, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)***CM-4791-CII-2021***

Application is allowed, as prayed for.

CR-111-2016

1. The present civil revision petition has been filed challenging the order dated 08.12.2015 (Annexure P-3) vide which the application filed by the petitioner-defendant under Order 7 Rule 11 CPC for rejection of the plaint, has been dismissed.

2. The respondents-plaintiffs had filed a suit seeking possession of tenanted premises situated at Ashri Gate Chowk, Jind City, the description of which property was given in the suit itself. The further prayer was that the petitioner-defendant would construct the building on the site and will deliver the possession of the said re-constructed building to the

respondents-plaintiffs or in the alternative, the respondents-plaintiffs be allowed to construct the building at a place, where he was already a tenant.

3. In the said suit, an application was filed under Order 7 Rule 11 CPC for rejection of the plaint raising a plea that there is no cause of action to file the present suit and further, once the building in question, in which the respondents-plaintiffs were tenant, has already been demolished and no relief was given in favour of the respondents-plaintiffs in a suit, wherein, they were seeking restraint from demolition of the building concerned, the present suit is hit by the principle of res-judicata and the plaint is liable to be rejected.

4. The said application has been dismissed by the courts below by the impugned order, which order dated 18.12.2015 has been challenged in the present civil revision petition.

5. Learned counsel for the petitioner-defendant argues that no doubt the respondents-plaintiffs were tenant in a building in question but the said building had been demolished by the Municipal Council, Jind even though a suit was filed by the respondents-plaintiffs seeking restraint upon the Municipal Council qua the demolition of the said building but as no interim injunction was granted in favour of the respondents-plaintiffs by the competent court of law, the said building has already been demolished by the Municipal Council, hence, fresh suit, which has been filed by the respondents-plaintiffs seeking the possession of the building in question, where the respondents-plaintiffs were tenant with the further direction to the petitioner-defendant to re-construct the portion or allow the respondents-plaintiffs to re-construct the tenanted portion is not maintainable and amounts to res-judicata, hence, the application filed by the petitioner-

defendant under Order 7 Rule 11 CPC has wrongly been rejected by the trial court.

6. Learned counsel for the respondents-plaintiffs, on the other hand, submits that the relief being sought in two suits filed by the respondents-plaintiffs was entirely different. Learned counsel for the respondents-plaintiffs submits that in the first suit, the relief sought was with regard to seeking restraint against the demolition of the building in question by Municipal Council where the respondents-plaintiffs were tenant but now as the said building has already been demolished, in the fresh suit, the relief is for grant of possession of the tenanted premises with the further direction to the petitioner-defendant either to re-construct the building in question or to allow the respondents-plaintiffs to construct the building at their own cost, hence, the prayer raised in the application that the present suit is barred by res-judicata, is without any application of mind and the said application has been rightly rejected by the trial court.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The claim which has been raised by the learned counsel for the petitioner-defendant that the present suit is barred by res-judicata, cannot be decided under application filed under Order 7 Rule 11 CPC. Said prayer of res-judicata can only be adjudged on the basis of the evidence which will come on record, as to whether the relief claimed in both the suits is identical and whether the relief claimed in the present suit should have been claimed in the earlier suit, hence the trial court was perfectly within its jurisdiction to reject the said contention raised by the petitioner-defendant that the present suit is barred by res-judicata, hence, the application filed under

Order 7 Rule 11 CPC has rightly been dismissed as for the purpose of deciding the said application filed under Order 7 Rule 11 CPC, only the facts mentioned in the plaint are to be taken into account and no other document including the averments made in the written statement can be taken into consideration to decide the said application.

9. Further, the argument of learned counsel for the petitioner-defendant that the present suit does not disclose any relief, cause of action/relief claimed is not correct. The prayer of the respondent-plaintiff is seeking possession of the tenant premises, which was under his possession prior to demolition of building and the re-possession is being sought of the same area with the further prayer that the re-construction should either be done by the petitioner-defendant or allow the respondent-plaintiff to do the same, hence the plaint discloses cause of action, which fact has rightly been noticed by the courts below while passing the impugned order.

10. Keeping in view the totality of the circumstances, the impugned order passed by the trial court in the present petition needs no interference at the hands of this Court and the civil revision is accordingly dismissed.

11. At this stage, learned counsel for the petitioner-defendant submits that the trial court be directed to conclude the proceedings of the suit as expeditiously as possible.

12. Learned counsel for the respondents-plaintiffs raises no objection for the grant of the said prayer.

13. Keeping in view the facts and circumstances of the present case, the trial court is requested to expedite the hearing of suit and decide the same as expeditiously as possible keeping in view the workload with the

court concerned.

14. Petition stands disposed of in above terms.

CM-10224-CII-2020 and CM-3618-CII-2022

As the main petition is disposed of, the present applications also stand disposed of.

May 15, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No