

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

CR 673/2023

Date of decision: 11.04.2023

Amandeep Singh Sra through his LRs**.....Petitioners****Vs.****Jasmeet Singh and others****.....Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. M.S. Saini, Advocate for the petitioner.

Nidhi Gupta, J.

Present revision petition has been filed by the defendant seeking setting aside of order dated 02.05.2019 (Annexure P-1) passed by Id. Single Judge (Sr. Division) Mohali, whereby application filed under Order 7 Rule 11 Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for rejection of the plaint on the ground that no cause of action to file the present suit has arisen nor has been disclosed, has been dismissed.

2. Brief facts of the case are that the petitioner and plaintiff/respondent No.1 herein are cousin brothers who had entered into a lease agreement dated 22.10.2013, in pursuance to which plaintiff had invested a sum of Rs.60 lacs into the business of the petitioner/defendant No.1, and respondent No.1/plaintiff had issued a cheque dated 31.08.2015 (Annexure P-3) in favor of the petitioner. As there was subsequently a dispute between the parties, plaintiff/respondent No.1 filed Civil Suit bearing CS No.512 of 2018 titled as ***'Jasmeet Singh Vs Amandeep Singh Sra and***

others'(Annexure P-5). By way of the said civil suit, respondent No.1/plaintiff sought: a) specific performance of agreement to sell dated 31.08.2015; as also sought the relief of b) declaration that the sale deed executed by the petitioner in favour of defendants No.2 and 3 pertaining to the property in question is null and void; and c) suit for permanent injunction restraining the defendants from selling, alienating and mortgaging the suit property during the pendency of the civil suit. It is in this civil suit that the petitioner filed the present application under Order 7 Rule 11 CPC (Annexure P-6) for rejection of the plaint on the ground that the suit does not disclose any cause of action. Vide the impugned order dated 02.05.2019 (Annexure P-1), the learned Civil Judge (Sr. Division), Mohali has dismissed the above said application of the petitioner. Hence, present revision petition.

3(i) It is submitted by learned counsel for the petitioner that perusal of the plaint (Annexure P-5) shows that the same does not disclose any cause of action. It is submitted that vide the said suit the plaintiff is seeking specific performance of alleged agreement to sell dated 31.08.2015 whereas, in the said agreement dated 31.08.2015, the column regarding payment etc. is blank, and there is overwriting.

3(ii) It is further submitted that the petitioner and respondent No.1/plaintiff are closely related to each other being first cousins and it is for this reason that the present agreement dated 31.08.2015 was executed wherein the columns were left blank. It is stated that the petitioner had no intention to sell the suit property nor was there any privity of contract qua the selling of the property and therefore, payment of Rs.60 lacs was made through cheque in favour of the petitioner by respondent No.1. It is

submitted that accordingly the present suit filed by the respondent No.1 is barred in view of Sections 12, 14, 16 & 21 of the Specific Relief Act, 1963 as once the respondent No.1 can be compensated in terms of money then the same cannot be utilized for the purpose of specific performance.

3(iii) It is further submitted that the present suit ought to have been rejected also in view of Section 23 of the Indian Contract Act, 1872 as any agreement without consideration, is void. It is submitted that admittedly in the present agreement dated 31.08.2015, it has only been mentioned that consideration has been paid but there is no mention of Rs.60 lacs paid through cheque, which is not reflected in the agreement.

4. No other argument is made on behalf of the counsel for the petitioner.

5. I have heard learned counsel for the petitioner.

6. By way of the impugned order petitioner's application filed under Order 7 Rule 11 CPC, has been dismissed.

7. It is the petitioner's case that the suit does not disclose any cause of action. The only ground on which the petitioner makes the said assertion is as, certain columns in the agreement dated 31.08.2015 have been left blank, and certain columns/ parts of the agreement have overwriting.

8. It is an unequivocally, undisputed and established position in law that in an application under Order 7 Rule 11 CPC, only the averments made in the plaint can be considered or looked into, while deciding such an application. In this regard, reference may be made to judgment of the Hon'ble Supreme Court in '*Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others(SC) Law Finder Doc ID#1865777*', wherein it

has been held “*Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application under order 7 Rule 11(d)*”.

9. Even in ‘**Ramesh B. Desai and others Vs. BipinVadilal Mehta and others: Law Finder Doc ID 103004**, the Hon’ble Supreme Court has held that “*in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order VII Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence*”.

10. In the present case, perusal of the civil suit Annexure P-5 shows that respondent No.1/plaintiff has raised several triable issues which require leading of evidence. Even a bare consideration of the contention on behalf of the petitioner, to the effect that the agreement in question dated 31.08.2015, bears blank columns and has overwriting, in itself shows that to prove the said assertion, evidence is required to be led in the matter. Therefore, the petitioner’s application under Order 7 Rule 11 CPC was rightly rejected.

11. As regards the other submissions made on behalf of the petitioner, Hon’ble Supreme Court in **Sejal Glass Limited. Vs. Navilan**

Merchants Pvt. Ltd. SC Law Finder Doc ID #892457 has held that “*under Order 7 Rule 11 CPC, rejection of part of plaint for non-disclosure of cause of action is not permissible - plaint has to be accepted or rejected as a whole ...Impugned order rejecting part of the plaint - Held - legally not sustainable and set aside*”. In said case, Hon’ble Supreme Court has further held that “*what is important to remember is that the provision refers to the “plaint” which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a suit from proceeding.*”

12. Learned counsel for the petitioner is unable to dispute the above said position in law, or cite any case-law to the contrary.

13. Thus, in view of the discussion hereinabove, I find no merit in the present revision petition.

14. Dismissed.

15. Pending application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

11.04.2023
ps-I

Whether speaking/reasoned	Yes
Whether reportable	Yes/No