

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

CR-659-2023

Date of Decision : February 01, 2023

Surinderjeet @ Surender Kumar

.. Petitioner

Versus

Krishna and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjiv Kumar Aggarwal, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

Present civil revision has been filed challenging the order dated 11.01.2023 (Annexure P-1) passed by the trial Court by which the application filed under Order 7 Rule 11 of the CPC moved by petitioner-defendant No.5 has been dismissed.

Learned counsel for the petitioner argues that the suit was filed by the respondent-plaintiff by impleading defendant No.2 who had already died on 23.10.2022 much before the filing of the suit in question and therefore, as no suit is maintainable against a dead person, the present suit is liable to be rejected even against the other defendants also who were very much alive and had been served.

Learned counsel for the petitioner submits that the application filed by the petitioner-defendant No.5 under Order 7 Rule 11 of the CPC has

Wrongly been rejected by the Court below. Learned counsel for the

petitioner further submits that keeping in view the settled principle of law settled by the Coordinate Bench of this Court in ***CR No.7685 of 2009 titled as Nachhattar Singh vs. Darshan Singh and others, decided on 03.08.2010***, the suit filed against the dead person is not maintainable and the said suit could only have been allowed to be withdrawn with liberty to file a fresh one.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

Learned counsel for the petitioner conceded the fact that the suit which has been filed for the declaration and permanent injunction is against the six defendants.

Out of six defendants, only defendant No.2 had died before the filing of the suit. That being so, the said fact will not give a right to the other defendants for the dismissal of the suit under Order 7 Rule 11 of the CPC.

The facts and circumstances of the present case clearly shows that the present suit filed by the respondent-plaintiff cannot be dismissed under Order 7 Rule 11 of the CPC merely on the ground that one of the defendant had died prior to the filing of the suit. Nothing has come on record so far to show that the respondent-plaintiff is knew about the said fact at the time of filing of the suit in question.

Learned counsel for the petitioner-defendant No.5 submits that the said fact was brought to the notice of the Court in the reply dated 20.12.2022 (Annexure P-4).

It may be noticed here that for passing an order under Order 7

Rule 11 of the CPC, only the plaint is to be seen and not any other record,

hence, there is no infirmity in the order passed by the trial Court dated 11.01.2023 by which, the application by petitioner-defendant No.5, has been dismissed.

Even otherwise, an application has already been filed for the rectification of the said fact so as to bring on record the the legal heirs of defendant No.2 or to substitute him with the other defendants required to be brought on record and the said application is still pending consideration with the Court below, no infirmity can be found in the order dated 11.01.2023.

Further, the facts in *Nachhattar Singh's case (supra)*, are not applicable in the present case for the reason that in the said civil revision, the order passed under Order 7 Rule 11 of the CPC was not under challenge but the application was filed under Order 23 Rule 1 and 2 of the CPC, hence, no benefit of the said judgment can be given in the present case.

Dismissed.

February 01, 2023

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No