IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.8828 of 2017 (O&M)
DATE OF DECISION : 19th JANUARY, 2023

Sohan Singh

…. Petitioner

Versus

Lehmbar Ram

…. Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Deepak Verma, Advocate,
for the petitioner.

Mr. Sarju Puri, Advocate,
for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 08.11.2017 (Annexure P-8) passed by the Civil Judge (Jr. Divn.) Garhshankar, whereby the application filed by the petitioner/defendant under Order 7 Rule 11 CPC has been dismissed.

Arguing the case, learned counsel for the petitioner has submitted that earlier there had been litigation between the parties. Since, there had been earlier adjudication of the disputes between the parties, therefore, a fresh suit could not have been filed on the similar facts and legal propositions. Still further, it is submitted that earlier suit was decided by the Lok Adalat and not by the Civil Court. Therefore, the only remedy available to the plaintiff in the second suit was to file a writ petition challenging that order. The counsel has relied upon the judgment

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rendered by Hon'ble the Supreme Court in the cases of ***State of Punjab and another Versus Jalour Singh and others, 2008(1) R.C.R. (Civil) 857*** and ***Bhargavi Constructions and another Versus Kothakapu Muthyam Reddy and others, 2017 (4) R.C.R. (Civil) 359,*** to support his arguments.

On the other hand, learned counsel for the respondent has submitted that the defendant cannot raise a dispute of fact in application under Order 7 Rule 11 CPC. At the time of consideration of application under Order 7 Rule 11 CPC, only the pleadings in the plaint are to be read. The counsel has further submitted that the argument raised by the counsel for the petitioner is in the nature of pleading res judicata against the present petitioner. However, the plea of res judicata is not even available under Order 7 Rule 11 CPC, the same being a mixed question of facts and law. Hence, it is submitted that the order has rightly been passed by the Court below.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the respondent. A perusal of the petition shows that the basis for the application filed by the petitioner/defendant under Order 7 Rule 11 CPC is the earlier proceedings, statedly, which had happened between the parties and the effect thereof. However, whatever be the ground qua the earlier proceedings, the effect thereof can be considered by the trial Court only after taking evidence and only after the said proceedings are proved before the Court, in accordance with law. Therefore, at this stage, there being a mixed question of fact and law involved in the matter, the application filed by the petitioner/defendant under Order 7 Rule 11 CPC

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could not have been allowed by the trial Court, therefore, the same has rightly been declined by the trial Court.

Although the counsel for the petitioner has relied upon the judgments rendered by Hon'ble the Supreme Court in the cases of ***Jalour Singh*** *(supra) and* ***Kothakapu Muthyam Reddy and others*** *(supra),* however, the said judgments are totally distinguishable because, in any case, as observed above, the petitioner would be required to prove the fact that the facts pleaded in the second suit are sufficient to constitute the reasons to bar the subsequent suit or to establish that he was required to approach the Writ Court for the exact claim which he has raised in the subsequent suit.

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

All pending miscellaneous application(s) stands disposed of as such.

19th JANUARY, 2023 **(RAJBIR SEHRAWAT)**
'sandeep' **JUDGE**

Whether speaking/reasoned: *Yes* *No*
Whether Reportable: *Yes* *No*

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