

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

251

CR-717-2019 (O&M)
Date of Decision: 19.04.2023

Smt. Shefali Walia

.....Petitioner

Versus

Anjali Khandelwal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. Rohan Mittal, Advocate for the respondent(s).

ARUN MONGA, J. (Oral)

Petition herein is for setting aside impugned order dated 05.01.2019 passed by learned Civil Judge (Junior Division), Gurugram, whereby application filed by defendant/petitioner herein, under Order 7 Rule 11 CPC, for rejection of plaint was dismissed.

2. Succinct facts first as pleaded in the instant petition.

2.1 Plaintiff/respondents filed the suit for possession by way of ejectment of petitioner herein from the demised premises allegedly let out by them on a monthly rent of Rs.28,000/- per month vide registered agreement for a period of 24 months w.e.f. 01.04.2016 to 31.03.2018. Besides it, through a hire agreement, an amount of Rs.7,000/- per month was charged for using the fixtures and fittings and further plaintiff /respondents also claimed that after termination of the tenancy, the possession of defendant/petitioner *qua* the premises in question is illegal and unauthorized therefore, he became liable to make the payment of Rs.3,000/- per day on account of damages.

2.2 Upon notice, defendant appeared and filed written statement (Annexure P-2) taking the preliminary objections regarding locus standi, jurisdiction, maintainability etc.

2.3. On merits, the averments raised by plaintiff/respondents herein were controverted by way of denial seeking dismissal of the suit with costs.

2.4. Petitioner/defendant also filed an application (Annexure P-3) under Order 7 Rule 11 CPC for rejection of plaint on the ground that Court has no jurisdiction to try and decide the present suit as the disputed property is situated within the urban area/municipal limit and only Rent Controller has the jurisdiction. Apart from this, the objection of suit being undervalued was raised on account of the fact that the relief of recovery of possession was being sought and the market value of the suit land is more than Rs.5,000/- per square yards and the area of the suit land is 1387 square feet, its value comes to Rs.69,35,000/- and Court fee of Rs.2,03,300/- was required to be affixed on the plaint.

2.5 Upon notice of the application, reply was filed stating that the application is just a delay tactics and sought dismissal of the application.

2.6. Ld. Trial Court vide impugned order dismissed the application. Hence, the revision petition.

3. Impugned order dated 05.01.2019 passed by learned trial Court, is premised, *inter alia*, on the following reasoning:-

“6. Arguments have been advanced and duly considered. Ld. counsel for Defendant/Applicant Sh. Subhash Grover, Adv. has urged the suit for possession is not maintainable on account of parties being in a Landlord-Tenant relationship and are governed by provisions of Rent Act. Further, deficiency in court fees is urged on account of market value of suit property. Ld. Counsel for Plaintiff/Respondent Sh. O.P. Lohiya, Adv. has urged that question of deficient Court fees cannot be made a ground for rejection of plaint, whereas the quantum of liquidated damages claimed is a matter, yet to be adjudged in course of trial.

7. *As such, considering that Plaintiff has affixed the court fees upon the value of sale deed by which suit property was purchased by her, there does not appear any ground for rejection of plaint. The objection of lack of jurisdiction as well as question of damages claimed and non-affixation of court fees thereupon, can very well be considered upon merits, upon which, specific issue shall be framed at relevant stage.*

8. *Application at hand is disposed off as disallowed, as there is no sufficient ground for adjudicating the present suit in limine and the matter of jurisdiction/court fees can be considered on merits.”*

4. There is no representation on behalf of petitioner today. I have heard learned counsel for respondents and perused the case file carefully. I am of the view that impugned order requires no interference.

5. Order VII Rule 11 of CPC reads thus:-

“ 11. Rejection of plaint- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamps-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6. On 31.01.2019, my learned brother Amol Rattan Singh, J., (as he then was in this Court) while issuing notice of motion, passed the following order:

“ *Learned counsel for the petitioner inter alia submits that the suit filed by the respondents being one seeking possession of the suit property by way of termination of the tenancy, a civil suit would not lie, with the subject matter falling within the ambit of the Haryana Urban Rent Restriction Act, 1973 and further, that even if the suit was to be entertained, even at this stage, then it being one seeking possession of the suit property, court fee ad valorem would need to be paid in terms of Section 7 (iv) (c) of the Court Fee Act, 1870.*

In the prima facie opinion of this court, as regard the first issue, that may be a question to be determined as a preliminary issue in the suit and therefore may not be adjudicable on an application filed under Order 7 Rule 11 of the CPC, but as regards the issue of court fee ad valorem being payable, let notice of motion be issued to the respondents, returnable on 08.02.2019.

Process dasti as well.”

7. *Apropos*, none appears on behalf of petitioner. In any case, I am also of the same view, as has been taken by my learned brother while issuing notice of motion.

8. In the premise, instant revision petition is disposed of and learned trial Court is requested to frame a preliminary issue *qua* objection of the suit being not maintainable and render findings on the same. It is expected of learned trial Court to decide the matter expeditiously and proceed with the trial, without granting unnecessary adjournments, subject of course to its own volition depending upon the day-to-day work load.

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

(ARUN MONGA)
JUDGE

19.04.2023
Harish Kumar

Whether speaking/reasoned : Yes/ No

Whether Reportable : Yes/ No