

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-1331-2022

Reserved on : 16.10.2023

Date of Decision: 24.11.2023

Arun Wadhwa and another

....Petitioners

VERSUS

M/s Chandan Textiles and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Arun Singal, Advocate,
for the petitioners.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
for the respondents.

KARAMJIT SINGH, J.

This revision petition has been filed by petitioners/defendants No.3 and 4 against order dated 17.3.2022 (Annexure P-4) passed by the Court of Civil Judge, Junior Division, Panipat whereby an application filed by the petitioners under Order 7 Rule 11 read with Section 151 CPC, has been rejected.

2. Brief facts of the case are that respondent No.1/plaintiff filed suit for permanent injunction restraining the defendants from alienating the suit property and further, suit for recovery of ₹18,91,005/- along with future interest from the defendants. In the plaint, the plaintiff took the plea that both the parties are into business of handloom products; that defendant No.1 M/s Anand Handloom Industries is a sole proprietorship firm and defendant No.2-Anand Wadhwa is its sole proprietor. Defendant No.3-Arun Wadhwa

is Managing Incharge and defendant No.4-Anil Wadhwa is manager of the said firm; that in August, 2019, defendant No.2 approached the plaintiff for purchase of handloom products in the name of defendant No.1 and the deal was settled. The goods worth ₹ 60,38,413/- were delivered to defendant No.1 through various invoices from 22.8.2019 to 8.3.2020. Defendants No.2 to 4 received and acknowledged the said goods by putting their signatures on various invoices. Part payment was made by the defendants from time to time but the amount of ₹ 18,91,005/- remained due and the defendants failed to make payment of the said amount despite service of legal notice dated 12.4.2021. Consequently, the suit for recovery of the aforesaid amount and for permanent injunction was filed by the plaintiff against the defendants.

3. Notice of the suit was issued to the defendants and they put in their appearance in the learned trial Court and defendants No.3 and 4 filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint.

4. In the aforesaid application filed under Order 7 Rule 11 CPC, defendants No.3 and 4 took the plea that they are having no concern with defendant No.1-firm and its business and that they are having no business transactions with the plaintiff and that defendants No.3 and 4 are not liable to pay any amount to the plaintiff; that the plaintiff wrongly mentioned in the plaint that defendant No.3 is Managing Incharge and defendant No.4 is Manager of defendant No.1 and they conduct day to day business of the said firm. So, prayer is made that the plaint be rejected as per provisions of Order 7 Rule 11 CPC.

5. The said application was contested by the plaintiff.

6. Learned trial Court dismissed the said application vide

impugned order Annexure P-4. Being aggrieved the petitioners have filed the present revision petition.

7. I have heard the counsel for the parties.

8. Counsel for the petitioners/defendants No.3 and 4 has *inter alia* contended that no doubt, defendants No.3 and 4 are sons of defendant No.2 but they are having no concern with the business of defendant No.1-proprietorship firm which is owned by defendant No.2. It has been further contended that the petitioners are unnecessarily dragged into the present litigation by the plaintiff-respondent No.1 and the petitioners have nothing to do with the alleged transactions, if any, which had taken place between the plaintiff-respondent No.1 and defendants No.1 and 2/respondents No.2 and 3. Counsel for the petitioners has further contended that thus, the plaint qua both the petitioners deserves to be rejected as it does not disclose a cause of action against them.

9. On the other hand, counsel for the plaintiff-respondent No.1, while supporting the impugned order, has *inter alia* contended that for the purpose of disposal of application under Order 7 Rule 11 CPC, only pleadings made in the plaint itself have to be considered at this stage. He has further contended that as per the averments made in the plaint, petitioner No.1 being Managing Incharge and petitioner No.2 being Manager along with defendant No.2 received and acknowledged the goods under invoices issued by respondent No.1/plaintiff and as such, the petitioners are also liable to make payment of the suit amount to respondent No.1/plaintiff. Counsel for respondent No.1/plaintiff has further contended that it is a matter of evidence as to whether the petitioners are not liable to make payment of the amount in question and thus, the trial Court rightly

dismissed the application filed under Order 7 Rule 11 CPC.

10. I have considered the submissions made by the counsel for the parties.

11. In order to reject a plaint for the suit by invoking provisions of Order 7 Rule 11 CPC, the Court needs to be guided only by the averments in the plaint and not by the defence taken by the defendants. In the instant case, the allegations in plaint do not refer to any transaction with the petitioners in their personal capacity. The only allegations against the petitioners in the plaint are that petitioner No.1 Arun Wadhwa being Managing Incharge and petitioner No.2 Anil Wadhwa being Manager of respondent No.2 which is sole proprietorship firm of respondent No.3, received and acknowledged the goods under the invoices issued by respondent No.1 by putting their signatures thereon and that petitioners and respondents No.2 and 3 made part payment of the due amount from time to time and failed to make payment of balance amount.

12. After going through the plaint it could be easily made out that the transactions in question were directly made by respondent No.1 with respondent No.2 a sole proprietorship firm through its proprietor respondent No.3 who is father of the petitioners. Even the invoices were issued in the name of aforesaid firm only. As per the averments made in the plaint there was no contract between petitioners and respondent No.1. Further there is no assertions in the plaint that the petitioners stood as guarantors or pledged their property to make payment of amount in question or had given any such undertaking or had even undertaken to make payment of disputed amount to respondent No.1. In the absence of any such contract between petitioners and respondent No.1 and undertaking with regard to payment of disputed

amount, it cannot be said that petitioners are also liable to make payment of the disputed amount to respondent No.1 along with respondents No.2 and 3. It being so petitioners are neither necessary nor proper party for the purpose of proper adjudication of the suit. Further, this Court is of the view that there was no cause of action to file the suit by respondent No.1 against the petitioners.

13. In view of the reasons stated above, this Court is of the opinion that the trial Court has erred in not exercising powers under Order 7 Rule 11 CPC and in not rejecting the plaint qua both the petitioners despite the fact that the plaint does not disclose a cause of action against both the petitioners. Impugned order (Annexure P-4) passed by the Court of Civil Judge, Junior Division, Panipat cannot be sustained and the same deserves to be set aside. Consequently, impugned order (Annexure P-4) is hereby set aside and the application filed by the petitioners under Order 7 Rule 11 CPC to reject the plaint against them is hereby allowed.

14. The present revision petition is allowed accordingly in terms of the above. However, it is made clear that the trial Court is to proceed further against defendants No.1 and 2 in accordance with law. Further, any observations made hereinabove are not to be construed as expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

November 24, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No