

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

CR No. 2803 of 2022 (O&M)

Date of decision: 09.01.2023

Ajit Singh Babbar

..... Petitioner.

Versus

Kirpal Singh

..... Respondent.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Pushpinder Kaushal, Advocate, for the petitioner.

Mr. Parvinder Singh, Advocate, for the respondent.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the order dated 05.05.2022 (Annexure P-4) whereby the application of the petitioner/defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ('CPC' - for short), has been dismissed.

Learned counsel for the petitioner/defendant submits that the suit had been filed by the respondent/plaintiff for eviction of the petitioner/defendant under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 ('Act of 1949' - for short), although the Punjab Rent Act, 1995 ('Act of 1995' - for short) had come in operation, as the tenancy commenced on 04.12.2015. In support of his submissions, he has relied upon the judgment of the Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman versus M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee**, 2012 (3) R.C.R. (Civil) 811 and also the judgment of a

Coordinate Bench of this Court in the case of **Krishan Kumar and others versus Kamla Devi and others**, 2016 (1) R.C.R. (Rent) 525.

Heard.

The respondent/plaintiff had filed a suit for eviction on the ground of *bona fide* personal necessity and non-payment of rent. The suit had been filed under the Act of 1949 although there is no dispute that the Act of 1995 had come in operation and would be applicable to the instant case, as the tenancy commenced on 04.12.2015. It is well settled that mere nomenclature of the application would not be determinative of its maintainability, as it is the substance and not the form of the application, which would be material for adjudication. It has been held by this Court in the case of Krishan Kumar (supra) that an application under Order 7 Rule 11 of the CPC cannot be allowed on the ground that the petition has been filed under the Act of 1949, but the Act of 1995 has come in operation.

The judgments relied upon by learned counsel for the petitioner/defendant are distinguishable on facts and not applicable to the instant case. There is no denying the proposition laid down in the case of Krishan Kumar (supra) that the Act of 1995 would be applicable to the tenancy which commenced after 30.11.2013. It was also observed by the Court that if the petition has been filed under the Act of 1949, then the petitioner can be permitted to amend the same.

The judgment of the Supreme Court in the case of Church of Christ Charitable Trust & Educational Charitable Society (supra) pertains to the Specific Relief Act and the application under Order 7 Rule 11 of the CPC was allowed as the plaintiff therein did not set out particulars of documents

on which the cause of action had been based although it is so mandated under Order 7 Rule 14 of the CPC.

Therefore, I do not find any infirmity in the impugned order dated 05.05.2022 (Annexure P-4) rejecting the application preferred by the petitioner/defendant under Order 7 Rule 11 of the CPC. The application under Order 7 Rule 11 of the CPC could have been allowed on account of non-disclosure of cause of action in the plaint itself. However, in the instant case, in the plaint for ejectment, the pleadings for the eviction on account of personal necessity and non-payment of arrears of rent had been set out and, therefore, it cannot be held that it does not disclose the cause of action.

Consequently, the petition stands dismissed.

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

09.01.2023
Ramesh

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No