

279

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

**CR-3416-2022 (O&M)
Date of Decision: 08.05.2023**

M/s Jai Singh Rakam Singh Bankers and Commission Agent
....Petitioner

Versus

Sham Lal and others
....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Bansal, Advocate
for the petitioner.

None for respondents, despite service.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 12.07.2022 (Annexure P-1) passed by Ld. Additional Civil Judge (Sr. Divn.), Kaithal, whereby application under Order 7 Rule 11 CPC, filed by petitioner, for rejection of plaint, was dismissed and against order dated 12.07.2022 (Annexure P-7), whereby application filed by plaintiff/respondent No.1 for impleadment, was allowed in a civil suit No.82 of 2017 for recovery against petitioner-firm.

2. The revision petition is premised on the averments that plaintiff/ respondent No.1 filed a suit for recovery of money alleging that his father used to deposit all his savings with defendant No.1/petitioner and in the financial year 2012-13, he deposited Rs.7,50,000/- with them before this death. Vide writing dated 15.01.2014, defendant No.1/petitioner acknowledged the deposit. Now after the death of said Mehar Singh, plaintiff along with pro forma respondents No.2 to 5 are entitled to recover the said deposit being Class-I legal heirs.

2.1. Petitioner moved an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that suit has not been framed according to the provisions of Order 2 Rule 1 CPC and Order 7 CPC. It was further contended that according to Order 30 Rule 1 CPC, the firm can be sued either through partner or proprietor and that suit was also time barred.

2.2. Vide impugned order dated 12.07.2022 (Annexure P-1), Ld. Court dismissed the aforesaid application.

3. Learned counsel for petitioner would argue that suit for recovery was filed against M/s Jai Singh Rakam Singh, Bankers and Commission Agent through Husan Singh, who is neither a Proprietor nor a Partner of the said Firm and therefore the application under Order 7 Rule 11 CPC has to be allowed and respondent No.1/plaintiff should not be allowed to later fill up that lacunae and defects of suit and therefore, the application to implead partners of petitioner firm, filed by respondent No.1/plaintiff, has to be dismissed. He would further contend that present suit has been filed

on the last date of limitation i.e., 13.01.2017 and therefore other persons cannot be impleaded beyond the period of limitation, because the limitation of suit expired on 14.01.2017, whereas the petitioner has been impleaded as party on 12.07.2022 after delay of five years.

4. None appears on behalf of respondent No.1/plaintiff despite service.

5. I have heard learned counsel for petitioner and gone through the record.

6. 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 it is not filed in duplicate;*
- (f) 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 stamp-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.”

7. Impugned order dated 12.07.2022 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Divn.), Kaithal, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx
 6. Arguments have been heard. Case file has been perused. Present application has been filed on one ground which is that partners of the firm are not impleaded and firm has to be sued through its partners. In my opinion, all parties should be present before the Court should be able to adjudicate upon and settle all questions involved in the suit. Necessary party can be impleaded at any stage. It is clear that once the Court comes to conclusion all necessary parties are not added, it may add them at any stage. By way of separate application, parties that is, partners of the applicant-defendant no.1 have been impleaded. Moreover, it is settled law that party should not suffer merely because of non-mentioning of all parties. Also, mere wrong mention of provision would not prohibit a party to litigation from getting justice. As such, the ground taken in present application is longer in existence, so the application is no longer maintainable. In these circumstances, application filed under Order 7, Rule 11 CPC is dismissed.
 xxxx xxxx xxxx xxxx”

8. There is no room for interference in the aforesaid valid reasons recorded by Ld. Court as the relief sought by petitioner is a mixed question of law and fact. Petitioner’s contentions are not covered by Order VII Rule 11 CPC *ibid* for rejection of plaint.

9. As regards the application for impleadment, in my opinion, it would be in the interest of justice if impugned order dated 12.07.2022 (Annexure P-7) is modified to the extent that while the application to implead the partners of petitioner/firm has been allowed, the same shall be subject to petitioner’s objections *qua* limitations.

10. Disposed of in the above terms.

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

(ARUN MONGA)
JUDGE

May 08, 2023
ashish

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