

2023:PHHC:103695

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR-4719-2022

Reserved on : 24.07.2023

Pronounced on : 09.08.2023

Shriya

.....Petitioner

Versus

Harbans Pran and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Argued by : Mr. L.S. Sandhu, Advocate for the petitioner.

Mr. Gurcharan Dass, Advocate for respondent No.1.

None for respondents No.2 to 5.

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**NAMIT KUMAR, J.**

1. The instant revision petition has been filed under Section 115 CPC read with Article 227 of the Constitution of India by the petitioner impugning the order dated 21.09.2022 passed by learned Civil Judge (Junior Division), Patiala whereby the application filed by the petitioner/defendant No.1 for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'the CPC') has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that the petitioner has filed one complaint under Protection of Women from Domestic Violence Act, 2005 against the uncle (Fufad) of the husband of the petitioner, her husband Shubham Kaushal, father-in-law Satish Chand

and mother-in-law Vanita. Except this complaint, petitioner has also filed various other police complaints against them. In order to counter-blast the above said complaints, respondent-Harbans Pran has filed one Civil Suit against petitioner and her family members, which is related to suit for permanent injunction from restraining petitioner/defendant No.1 in connivance with defendants No.2 to 4 from filing false and frivolous criminal complaints against respondent No.1/plaintiff and interfering in the peaceful life of respondent No.1/plaintiff, for mandatory injunction directing the defendants not to entertain the false and frivolous complaints of petitioner/defendant No.1 and also to take necessary action against petitioner/defendant No.1 for filing false and frivolous complaints against the respondent No.1/plaintiff and suit for recovery of damages from defendants No.1 to 4 on account of defamation, mental torture, harassment cause by the petitioner/defendant No.1 to the respondent No.1/plaintiff for damaging his reputation publicly alongwith interest @ 12% par annum till realization of the amount along with costs.

3. The present petitioner/defendant No.1 put in appearance in the said civil suit and thereafter, moved an application under Order 7 Rule 11 of the CPC for rejection of plaint on the grounds that suit is barred by Section 41(c) and (d) of the Specific Relief Act, 1963 as well as Section 80 of the CPC. The plaintiff/respondent No.1 has filed reply to the said application and thereafter, the Court of learned Civil Judge (Junior Division), Patiala vide impugned order dated 21.09.2022

dismissed the said application filed by the petitioner/defendant No.1.

4. Learned counsel for the petitioner contends that the suit filed by respondent No.1/plaintiff was liable to be dismissed for want of cause of action as the suit preferred by respondent No.1/plaintiff for permanent injunction restraining petitioner/defendant No.1 from filing false and frivolous case against him and directing the defendants not to entertain false complaints of petitioner/defendant No.1 and not to summon respondent No.1/plaintiff in false complaints moved by petitioner/defendant No.1. Learned counsel for the petitioner further submits that no notice under Section 80 of the CPC was served upon respondent No.5 SHO/Investigating Officer whereas being a public servant it was required to serve notice upon respondent No.5 before filing of the suit.

5. On the other hand, learned counsel for the respondent No.1 has argued that in the suit filed by respondent No.1/plaintiff, he has also claimed the relief of recovery of damages from defendants No.1 to 4 on account of defamation, mental torture and harassment caused by petitioner/defendant No.1 for damaging his reputation publicly along with interest @ 12% per annum and therefore, the application filed by petitioner/defendant No.1 was rightly dismissed by learned Civil Judge (Junior Division), Patiala vide order dated 21.09.2022. He further submits that the relief claimed in the suit as a whole is to be considered and the plaint is either to be accepted or rejected as a whole.

6. I have heard learned counsel for the parties and perused the

impugned order and other relevant record.

7. The impugned order dated 21.09.2022 passed by learned Civil Judge (Junior Division), Patiala reads as under:-

*“Heard on the application of the defendant for rejection of plaint under Order 7 Rule 11 CPC.*

*It has been averred in the present application that in the present suit, the plaintiff has sought the relief restraining the defendants from filing false complaints and for mandatory injunction directing defendants not to entertain false complaints and hence suit of the plaintiff is not maintainable under Section 41 (c), (d), (h), of Specific Relief Act. Further the plaintiff has not complied with the requirement of Section 80 Civil Procedure Code and hence the suit of plaintiff be dismissed.*

*Upon reply the plaintiff has objected the present application by denying all the averments in the present application and it is further averred by the plaintiff that present application has been filed with sole purpose of delaying the proceedings.*

*Both the counsel have argued as per their averments in the present application and its reply. Both the counsels have been heard and the file has been perused.*

*Perusal of file reveals that the plaintiff has filed the present suit for permanent injunction from filing false and frivolous case against him and directing defendants not to entertain the false complaints of defendant no.1 and not to summon plaintiff in false complaints moved by defendant no.1. Further the plaintiff has also claimed the relief of recovery of damages from defendant no.1 to 4 on account of defamation, mental torchure and harassment caused by defendant no.1, for damaging his reputation publically along with interest @ 12% per annum. As such, the suit of plaintiff is not solely to restrain the defendant no.1 from filing complaints against him rather he has claimed the relief of damages as well. As such, the suit of the plaintiff cannot be said to barred under the provisions of Section 41 (c), (d), (h), of Specific Relief Act.*

*Further, in the present application the defendants have taken contention that the plaintiff has not served any notice under Section 80 of the CPC which he was required*

*to serve defendant no.5 SHO/Investigating Officer nor he has taken any leave of the court to sue defendant no.5 without serving notice under Section 80 CPC. In the present case defendant no.1 to 4 have been sued in their individual capacity and defendant no.5 qua whom the objection under Section 80 CPC has been taken, has already been proceeded against ex parte v.o.d 19.07.2022. As such, no ground is made out to consider this objection when the defendant no. 5 is already ex parte.*

*In light of above said facts and circumstances the application of defendants under order 7 Rule 11 CPC stands dismissed.*

*Observations made in this order shall have no bearing upon the merits of the case. Now, to come up on 10.10.2022 for filing Written statement and reply by defendants no. 1 to 4.”*

8. In the suit filed by respondent No.1/plaintiff/Harbans Pran against the present petitioner/defendant No.1/Shriya and three others the following relief has been claimed :-

*“It is, therefore, prayed that the suit of the plaintiff may kindly be decreed with costs in favour of the plaintiff and against the defendant and a decree for permanent injunction restraining the defendant No.1 in connivance with defendants No.2 to 4 from filing false and frivolous criminal complaints against the plaintiffs and interfering in the peaceful life of the plaintiffs, for mandatory injunction directing the defendants not to entertain the false and frivolous complaints of defendant No. 1 and also not to summon the plaintiff in connection with false and frivolous complaints filed by defendant No.1 and also to take necessary action against the defendant No.1 for filing false and frivolous complaints against the plaintiffs AND a decree for recovery of damages from defendant No.1 to 4 on account of defamation, mental torture, harassment caused by the defendant No.1 to the plaintiff for damaging his reputation publicly alongwith interest @ 12% P.A. till realization of the amount alongwith costs, may kindly be passed till the actual realisation of amount.*

*Any other relief to which this Hon’ble Court may*

*deems fit may kindly be granted in favour of the plaintiffs and against the defendants.”*

9. Since apart from the relief of restraining the petitioner/defendant No.1 from filing false complaints against respondent No.1/plaintiff and for mandatory injunction directing the defendants not to entertain false complaints, respondent No.1/plaintiff has also claimed the recovery of damages from defendants No.1 to 4 on account of defamation, mental torture and harassment caused to respondent No.1/plaintiff for damaging his reputation publicly along with interest @ 12% per annum, therefore, the application filed by petitioner/defendant No.1 under Order 7 Rule 11 CPC has rightly been rejected by learned Civil Judge (Junior Division), Patiala vide impugned order dated 21.09.2022.

10. The Hon'ble Supreme Court in the case of ***Madhav Prasad Aggarwal and another Vs. Axis Bank Ltd. and another : 2019(3) RCR (Civil) 510*** has held that plaint can either be rejected as a whole or not at all and it is not permissible to reject plaint qua any particular portion of the plaint including against some of the defendants and continue the same against the others.

11. So far as the contention raised by learned counsel for the petitioner that before filing the suit, no notice under Section 80 CPC was issued to defendant No.5-SHO/Investigating Officer/Arresting Officer, being a public servant, is concerned, it is to be noted that firstly the said objection can only be raised by him and secondly, he has already been proceed ex-parte by the Trial Court and therefore, there is

no substance in the contention raised by learned counsel for the petitioner.

12. In view of above, there is no infirmity in the impugned order dated 21.09.2022 passed by learned Civil Judge (Junior Division), Patiala and needs no interference and consequently, the instant revision petition is dismissed.

09.08.2023  
Kothiyal

(NAMIT KUMAR)  
JUDGE

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|---------------------------|-----|
| Whether Speaking/reasoned | Yes |
| Whether Reportable        | Yes |