

126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6004-2023 (O&M)
DECIDED ON: 09.10.2023

M/S SIDDHARTH EXPORTS AND ANOTHER

.....PETITIONERS

VERSUS

M/S BASANT METAL WORKS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Hitesh Pandit, Advocate for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition assails the order dated 22.09.2023 passed by the Civil Judge (Junior Division), Jalandhar vide which the application filed by the petitioners-defendants under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

2. The facts, as emanating from the paper book, are that a suit for recovery of ₹24,84,011.38/- was filed by the respondent-plaintiff against the petitioners-defendants (Annexure P-2). Written statement (Annexure P-3) was filed, contesting the said suit. During the pendency of the suit, an application for rejection of the plaint (Annexure P-8) was moved. It was averred in the application that as per Section 69 of the Indian Partnership Act, 1932, no suit to enforce a right arising from a contract, could be instituted in any Court unless the firm was registered. It was averred that the suit had been filed by the respondent-plaintiff without the requisite registration certificate and that even the partner through whom the suit had been filed was not authorized to file the suit. It was averred that under the circumstances, the plaint was liable to be rejected. The application was resisted by the respondent-plaintiff as is evident from the impugned order. Though no reply was filed, the application was orally contested.

The trial Court dismissed the application for rejection of plaint vide order dated

22.09.2023, leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner and have perused the paper book.

4. Learned counsel for the petitioners-defendants has submitted that the trial Court erred in dismissing the application for rejection of plaint. It has been contended that no registration certificate had been filed alongwith the plaint and further that the partner through whom the suit had been filed was not authorized to file the said suit and no such authorization was placed on record. Even during evidence, no such authorization was produced. It has been submitted that under the circumstances, the plaint should have been rejected.

5. I have considered the submissions made by learned counsel for the petitioners-defendants but find the same to be devoid of merit.

6. Admittedly, the suit is at the final stage. No doubt, an application for rejection of plaint can be moved at any stage. However, the issues raised for rejection of the plaint viz non filing of registration certificate and the suit not having been filed by the authorized person, are not those on which a plaint can be rejected. The issue of maintainability, as admitted by learned counsel for the petitioners-defendants has been framed by the trial Court and these issues shall be decided by the trial Court while deciding the suit and after parties lead their respective evidence. A plain reading of the plaint would nowhere show that the suit falls within the provisions of Order 7 Rule 11 CPC warranting its rejection at the outset.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

09.10.2023

Prince Chawla

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No