

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****221****CR No.3825 of 2016 (O&M)****Reserved on : 08.05.2024****Date of Decision : 13.05.2024**

Baljinder Singh and Others

....Petitioners

VERSUS

M/s Chattha and Associates and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sapan Dhir, Advocate for the petitioners.

Mr. Pawan Kumar, Senior Advocate with
Ms. Vidhushi Kumar, Advocate for respondent Nos.1 and 2.Mr. Gaurav Chopra, Senior Advocate with
Mr. Arnav Singh and Mr. Akshat Dalal, Advocates
for respondent Nos.3 to 5.**ALKA SARIN, J. (Oral)**

1. The present revision petition has been preferred by the defendant-petitioners under Article 227 of the Constitution of India for quashing of the order dated 26.02.2016 whereby the application filed by them under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint was dismissed.

2. The brief facts relevant to the present case are that plaintiff-respondent Nos.1 and 2 herein filed a suit for declaration to the effect that plaintiff-respondent No.1 is owner in possession of land measuring 238 Kanals 10 Marlas in Khata No.1-2-36 situated in Village Beer Ferozari, H.B. No.364, Tehsil and District Panchkula as per Jamabandi for the year 2008-09 on the basis of an agreement to sell dated 01.09.2003 executed



between plaintiff-respondent No.1 and the defendant-petitioners and further for challenging the cancellation of GPAs dated 19.01.2004 and 07.06.2006 and further for permanent injunction. The defendant-petitioners herein filed an application for rejection of the plaint under Order VII Rule 11 CPC the contents of which read as under :

“1. That the present Civil Suit filed by the plaintiffs is pending in this Hon'ble Court and is fixed for today i.e. 14.01.2014.

2. That the applicants/defendants are filing an accompanying detailed written statement, the contents thereof may kindly be read as a part and parcel to this application as well.

3. That in view of the detailed submissions made by the applicants/defendants, the present suit filed by the plaintiffs deserves not to be entertained and proceeded with and deserves to be dismissed straightway being not maintainable in the present form at all. The plaintiffs have no cause of action and locus standi to file the present civil suit against the applicants/defendants nor they have right, tile or concern with the suit property.

In view of the above submissions and accompanying detailed written statement, it is respectfully prayed that this application may kindly be allowed and the present suit filed by the plaintiffs may kindly be dismissed with costs.”



3. Reply was filed to the said application. Vide the impugned order dated 26.02.2016 the said application came to be dismissed. Hence, the present revision petition.

4. Learned counsel for the defendant-petitioners would contend that the suit was barred by limitation as also that no cause of action is made out from a reading of the plaint. Learned counsel for the defendant-petitioners has relied upon judgments of the Hon'ble Supreme Court in the cases of **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) thr LR's & Ors. [2020(3) RCR (Civil) 98]**, **Fatehji and Company & Anr. vs. L.M. Nagpal & Ors. [2015(2) RCR (Civil) 999]**, **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr. [2011(4) RCR (Civil) 669]**, **Greater Bombay Co-operative Bank Ltd. vs. Nagraj Ganeshmal Jain & Ors. [2017(3) RCR (Civil) 964]**, **Rakesh Malhotra vs. Kamaljit Singh Sandhu & Ors. [2019(1) RCR (Civil) 90]**, **Ghanshyam Sarda vs. Sashikant Jha & Ors. [2017(1) RCR (Civil) 1]**, **Ramisetty Venkatanna & Anr. vs. Nasyam Jamal Saheb & Ors. [2023(2) Apex Court Judgments (SC) 444 = 2023 SCC OnLine SC 521]** and **C.S. Ramaswamy & Ors. vs. V.K. Senthil & Ors. [2022(4) RCR (Civil) 426]**.

5. *Per contra* learned senior counsel appearing on behalf of the plaintiff-respondent Nos.1 and 2 and on behalf of respondent Nos.3 to 5 would contend that the application itself is totally bereft as to how no cause of action is made out. It is further the contention that the ground of limitation was neither raised in the application nor argued before the Trial Court. Learned senior counsel appearing on behalf of the plaintiff-respondent Nos.1 and 2 has relied upon a judgment of the Hon'ble Supreme Court in the case of **Eldeco Housing and Industries Limited vs. Ashok Vidyarthi & Ors.**



[2023(4) Law Herald (SC) 3430 = 2023 SCC OnLine SC 1612] to contend that no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 CPC.

6. I have heard learned counsel for the parties.

7. In the present case the application under Order VII Rule 11 CPC itself filed by the defendant-petitioners is a flimsy application and is bereft of any details. It merely states that the suit is not maintainable in the present form. The judgment relied upon by learned counsel for the defendant-petitioners in the case of **Dahiben** (supra) would not come to the rescue of the defendant-petitioners as on a meaningful reading of the plaint it cannot be said that no cause of action is made out. The contents of the plaint are to be taken in entirety and in conjunction with the documents relied upon and if on a meaningful reading the Court comes to a conclusion that it does not disclose the cause of action then the power under Order VII Rule 11 CPC can definitely be exercised. However, in the present case on a reading of the plaint it cannot be said that no cause of action is made out. It has specifically been stated by the plaintiff-respondent Nos.1 and 2 that plaintiff-respondent No.1 is in possession of the suit property post the agreement to sell. It has further been averred in the plaint that since change of the revenue record was not allowed at that point of time as per order of the Collector Agrarian, an irrevocable GPA was executed. It would be a matter of evidence as to whether the amounts as stated in the plaint were paid to the defendant-petitioners. It is further the case set up by the plaintiff-respondent Nos.1 and 2 that plaintiff-respondent No.1 is in possession of the suit property. That being so it cannot be said at the outset that no cause of action is made out. There is a specific averment in the plaint that the defendant-



petitioners have threatened to dispossess the plaintiff-respondent Nos.1 and 2. A perusal of the plaint reveals that cause of action is contained in para 13 therein which reads as under :

“13. That cause of action arose in favour of the plaintiff firstly when the defendants executed Agreement to sell and thereafter when executed the GPA, thereafter when sending the legal notice for the cancellation of GPA, in the month of Jan. 2011 when they came at the spot and tried to dispossess the plaintiffs from land in question and lastly on Yesterday day when the defendants threatened the plaintiffs to dispossess him from the land in question.”

8. There can be no quarrel with the proposition of law as laid down in the cases of **Suraj Lamp and Industries Pvt. Ltd.** (supra) and **Greater Bombay Co-operative Bank Ltd.** (supra). However, the plaint cannot be rejected at this stage under Order VII Rule 11 CPC without going into the evidence in the present case. The reliance of learned counsel for the defendant-petitioners on the judgments in the cases of **Rakesh Malhotra** (supra) and **Ghanshyam Sarda** (supra) would also not come to the aid of the defendant-petitioners inasmuch as both the judgments do not pertain to cases under Order VII Rule 11 CPC.

9. The argument of learned counsel for the defendant-petitioners that the suit is barred by limitation was neither raised in the application nor argued before the Trial Court and hence the said point of limitation cannot be raised in the present revision petition. There can be no quarrel with the proposition of law as settled in the cases of **Ramisetty Venkatanna** (supra)



and **C.S. Ramaswamy** (supra). However, the fact remains that the said ground was not even raised before the Trial Court and hence this Court cannot go into the same.

10. Hon'ble Supreme Court in the case of **Sopan Sukhdeo Sable vs. Assistant Charity Commissioner [2006(1) RCR (Rent) 138]** has held that the plaint cannot be partially rejected. It was held as under :

"18. As noted supra, the Order 7 Rule 11 does not justify rejection of any particular portion of the plaint. Order 6 Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

19. Order 6 Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

20. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the



facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott. L.J. in Bruce v. Odhams Press Ltd., 1936(1) KB 697 in the following passage :

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order 25, Rule 4 (see Philips v. Philipps, 1878(4) QBD 127); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of



pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez, (1969(3) SCC 238), the distinction between "material facts" and "particulars" was brought out in the following terms :

"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Rule 11 Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the



filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

11. No other argument has been raised by learned counsel for the defendant-petitioners.

12. In view of the above, the present revision petition, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.05.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO