

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2183-2019 (O&M)

Date of Decision: January 05, 2024

M/s Naresh Mittal and sons

...Petitioner

Versus

Jaswinder Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Gaurav Aggarwal, Advocate
for the petitioner.

Mr.Gunjeet S. Brar, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 10.01.2019 passed by learned Court below, whereby, an application under Order 7 Rule 11 CPC, filed by the petitioner-plaintiff, thereby, seeking rejection of the counter claim filed by the respondent-defendant, in a civil suit, had been dismissed.

The essential facts, as culled out from the paperbook are as follows:-

That, initially, the petitioner-plaintiff filed a suit against respondent-defendant for seeking recovery of Rs.2,72,000/-. Copy of the plaint is Annexure P-1. In pursuance of the notice issued, respondent-defendant

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made appearance and filed written statement, copy whereof is Annexure P-2. In the written statement, the respondent-defendant, as such, has not disputed the avocation followed by the petitioner-plaintiff. However, it is denied that any amount was borrowed by the respondent-defendant from the petitioner-plaintiff, vide cheque bearing No.32017702 dated 08.11.2013. In fact, it was averred that the respondent-defendant used to sell agricultural produce through agency of the petitioner-plaintiff firm, but when the plaintiff did not pay the amount due to the defendant, then the defendant left the firm of the plaintiff and started to sell his crop through M/s New Haryana Trading Company, Mandi Dabwali. Due to this grudge, the plaintiff had filed a false and frivolous suit against the defendant.

Even, counter claim, copy whereof is Annexure P-3, was filed for rendition of account, thereby, seeking direction to the plaintiff-firm to render the account regarding sale of crops having been sold by the defendant through the agency of the plaintiff-firm.

In pursuance of filing of the counter claim, the petitioner-plaintiff filed an application under Order 7 Rule 11 CPC, thereby, seeking rejection of the counter claim filed by the respondent-defendant. In the same, it was asserted that a specific amount has been claimed of Rs.6 lakhs in the counter claim, but however, *ad valorem* Court fee has not been affixed. Furthermore, even the counter claim is not maintainable and thus, it is liable to be rejected.

In reply to the aforesaid application, it is denied that the for recovery of specific amount, the counter claim has been filed. In fact, it was

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only the tentative outstanding amount. Also, the counter claim was asserted to be maintainable in the present form.

After hearing, learned counsel for the parties, vide impugned order dated 10.01.2019, the application under Order 7 Rule 11 CPC, for rejection of the counter claim was dismissed.

Feeling aggrieved, the petitioner-plaintiff had filed the present revision petition.

In pursuance of the notice issued, the respondent-defendant made appearance through counsel.

Learned counsel for the parties heard.

Perusal of the pleadings of the parties as well as counter claim, copies whereof, have been placed on record, reveals that the dispute between the parties relate to the recovery of Rs.2,72,000/-, as asserted by the petitioner-plaintiff and also about rendition of account. Though, in the application under Order 7 Rule 11 CPC, it is stated that *ad valorem* Court fee is required to be paid and also disputed about the maintainability of the counter claim, but however, it is pertinent to mention that close perusal of the impugned order, more particularly, paragraph No.7 reveals about the observations having made by the Court below, with regard to the present suit having filed for seeking possession by way of specific performance of the agreement to sell dated 28.02.2017 and further about the terms settled for execution and registration of the sale deed. On the basis thereof, an observation was also further made that there appears a valid cause of action, in favour of the respondent.

Definitely, the observations, so made, in paragraph No.7 of the impugned order are out of context. Nowhere, from the pleadings of the parties, it is evident that there was any relief sought by either party, with regard to the specific performance of agreement to sell dated 28.02.2017. Seemingly, the addition of paragraph No.7 in the impugned order, is on account of cut and paste method, adopted by the Court below. There is no controversy with regard to the observations as made by the Court below in paragraph No.7 of the impugned order.

Keeping in view the aforesaid fact situation, it shall be in the interest of the parties concerned, if the application under Order 7 Rule 11 CPC is decided afresh. In the light of the same, the impugned order dated 10.01.2019 is set aside and learned Court below, is hereby directed to decided the aforesaid application afresh, while considering the contents of the application as well as the reply, filed to the same. The parties are directed to make appearance before the Court concerned on 30.01.2024.

According, the present revision petition stands disposed of.

January 05, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No