

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****124****CR No.3607 of 2024 (O&M)****Reserved on : 01.07.2024****Date of Decision : 16.07.2024**

Ashish Verma and Another

....Petitioners

**VERSUS**

Rajeshwar Arya and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sanjay Verma, Advocate for the petitioners.

**ALKA SARIN, J.**

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 21.05.2024 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 No.1 herein filed a suit for permanent and mandatory injunction for directing the defendant-petitioners to get the building plan approved from the concerned department and for restraining the defendant-petitioners from creating any kind of encroachment that impedes the property of the plaintiff-respondent No.1 and for directing the defendant-petitioners to remove the beam that encroached upon the external wall and restore the same and restrain the defendant-petitioners from interfering in the peaceful possession of the plaintiff-respondent No.1. As per the plaintiff-respondent No.1 the defendant-petitioners had purchased the adjacent property and started raising construction without getting the plans sanctioned from



Municipal Corporation Gurgaon. As per the plaintiff-respondent No.1 the defendant-petitioners had put a beam on his wall which had caused damage and weakened the adjoining property of the plaintiff-respondent No.1. The defendant-petitioners herein filed an application for rejection of the plaint under Order VII Rule 11 CPC on the ground of there being no cause of action and the suit being barred under Section 389 of the Haryana Municipal Corporation Act, 1994. The contents of para 2 of the said application read as under :

*“2. That the plaint of the present suit is liable to be rejected on the following grounds :*

*A. That no cause of action ever arose to the plaintiff to file the present suit as the applicants are neither the owners nor are in possession of the suit property and no construction of any kind has been raised by them at the spot as they are having no concern with the suit property and the present suit has been filed by the plaintiff against the applicants just to cause harassment with an ulterior motive.*

*B. That the suit is barred u/s 389 of Haryana Municipal Corporation Act, 1994 as it was mandatory upon the plaintiffs to serve the required notice upon the deft. No.4 i.e. Municipal Corporation Gurugram but no such notice has been served by the plaintiff upon it nor any exemption has been sought by him rather it has*



*sought exemption of Sec. 80 CPC which is having no bearing to the merits of the present case.”*

3. Reply was filed to the said application. Vide the impugned order dated 21.05.2024 the said application came to be dismissed. Hence, the present revision petition.

4. Learned counsel for the defendant-petitioners would contend that the plaint was liable to be rejected as no cause of action is made out from a reading of the plaint. It is argued that the defendant-petitioners are not the owners nor in possession of the suit property and that no construction has been undertaken by them on the suit property. Counsel for the defendant-petitioners has further submitted that the suit was barred under Section 389 of the Haryana Municipal Corporation Act, 1994 as no notice had been served upon the defendant No.4 (Municipal Corporation Gurugram).

5. I have heard learned counsel for the defendant-petitioners.

6. In the present case there are clear averments in the plaint that *“the defendant is the owner of Bombay Jewellers situated at Sadar Bazar and has purchased a property 3 months back and currently stating himself as owner of property adjacent to the plaintiff’s property i.e. known as 228/3, New Bazar, Gurugram”*. Para 8 of the plaint regarding cause of action also inter-alia states that the cause of action arose when the defendant-petitioners started construction process without taking prior necessary permissions from the concerned departments. Regarding the objection of non-issuance of notice under Section 389 of the Haryana Municipal Corporation Act, 1994 suffice it to say that Section 389(3) itself states that *“Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an*



*injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit”.*

7. It is trite that on an application under Order VII Rule 11 CPC only the contents of the plaint along with the documents filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejecting the plaint under Order VII Rule 11 CPC. The Court while exercising powers under Order VII Rule 11 CPC is required to see whether the averments as made in the plaint are contrary to statutory law or barred by any law and whether a case is made out for rejecting the plaint at the very threshold. On a meaningful reading of the plaint, if it is found that the same is vexatious and does not disclose any right to sue or is barred by any law, the Courts would exercise its power under Order VII Rule 11 CPC. In the present case the suit filed by the plaintiff-respondent No.1 is for grant of injunction. 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. The question whether the defendant-petitioners are the owners of the suit property and are carrying out construction thereon is a matter of evidence. That being so it cannot be said at the outset that no cause of action is made out. The plaint cannot be rejected at this stage under Order VII Rule 11 CPC without going into the evidence in the present case.



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

9. 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.

**( ALKA SARIN )**  
**JUDGE**

16.07.2024  
jk

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