



In the High Court of Punjab and Haryana at Chandigarh

**CR No.3618 of 2024(O&M)
Date of Decision: 01.08.2024**

Jasvir Kaur @ Jasbir KaurPetitioner

Versus

Gurmit SinghRespondent

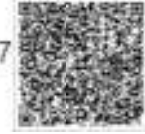
CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sudesh Sahi, Advocate for the petitioner.

RITU TAGORE, J.

1. This revision petition filed under Article 227 of the Constitution of India, is directed against order dated 16.05.2024 (Annexure P-5), whereby learned Civil Judge (Junior Division), Ludhiana, dismissed the application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC (Annexure P-3) in Civil Suit No.6459 dated 18.12.2018 titled ‘Gurmit Singh Vs. Jasvir Kaur’.

2. Learned counsel for the petitioner contends that respondent/plaintiff instituted a civil suit for declaration, claiming himself as owner of the suit property, as detailed in the plaint (Annexure P-1), being only legal heir of deceased Sh. Balwinder Singh, his father. The petitioner appeared in the suit, filed response (Annexure P-2), controverting the pleadings of the plaint, wherein she specifically asserted herself to be the legally wedded wife of Balwinder Singh and claimed herself to be the absolute owner of the suit property, being her self-acquired property.



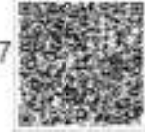
3. Learned counsel for the petitioner submits that during the proceedings of the case, the petitioner moved an application (Annexure P-3) under Order 7 Rule 11 read with Section 151 CPC, for rejection of the plaint on the ground that it is barred under the provisions of Benami Transaction (Prohibition) Act, 2018 (hereinafter to be referred as 'the Act'); relief is under-valued for the purpose of Court fee and jurisdiction, and the plaint does not disclose cause of action.

4. Learned counsel for the petitioner submits that learned Trial Court, after taking a response (Annexure P-4) from the respondent and hearing the parties, dismissed the application arbitrarily on surmises and conjectures, vide impugned order dated 16.05.2024 (Annexure P-5).

5. Learned counsel for the petitioner submits that contents of the plaint clearly indicate that respondent/plaintiff's suit is barred under the provisions of the Act, improperly valued for the purpose of Court fee and fails to disclose any cause of action. However, the learned Trial Court failed to appreciate the relevant law and facts governing the issue and erred in dismissing the application. While relying upon a judgment of Hon'ble the Supreme Court in **R.K. Roja Vs. U.S. Rayudu and another, 2016(3) RCR (Civil) 810**, it is submitted that an application under Order 7 Rule 11 CPC can be moved at any stage of the suit. Based on these submissions, learned counsel for the petitioner prayed for acceptance of the revision petition and for setting aside the impugned order dated 16.05.2024 (Annexure P-5).

6. I have heard counsel for the petitioner, gone through the paper-book and the documents annexed.

7. Insofar as the filing of application under Order 7 Rule 11 CPC

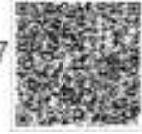


is concerned, same can be filed at any stage of the suit as held in **R.K. Roja's** case (supra). In para No 5, Hon'ble the Supreme Court has held as under:-

“We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7, Rule 11 of the CPC can be filed at any stage, as held by this Court in *Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others, 2006(1) RCR (Rent) 138: (2004) 3 SCC 137 ...* “The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. ...”. The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f) of the CPC, the same has to be rejected.”

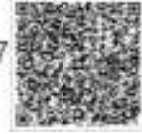
8. The learned Trial Court while rejecting the application under Order 7 Rule 11 CPC determined as under:-

“4. Ld. Counsels for both the parties have referred numerous Judgments of Hon'ble Supreme Court as well as various Hon'ble High Court and said judgments are distinguishable in the present application and now this Court has reached to the conclusion that provisions enshrined in Order 7 Rule 11 CPC could be invoked for rejecting the plaint only if it appears from the averments of the plaint that the same is barred by the law. In the present application, the applicant/defendant has sought the rejection of the plaint on the ground that suit of the plaintiff



is liable to be rejected being without cause of action as well as plaintiff has failed to pay the proper and advolurem court fee on the plaint and the suit of the plaintiff is barred under Benami Transaction Act. This Court is of considered view that Cause of action is the foundation of any suit and it is pivot around which the whole suit revolves. The question whether the plaintiff has no cause of action to file the present suit and the instant suit is not maintainable are mixed question of fact and law which are to be decided on the basis of evidence adduced by the parties and not at the initial stage when the parties have to yet lead evidence. Further, this Court is of considered view that defence available to the defendant or plea taken by them in the written statement cannot be the basis to decide the application under Order 7 Rule 11 CPC. Only the contents mentioned in the plaint is germane. Moreover, the defendant has filed the written statement and has already taken the preliminary objections regarding Court fee and cause of action. Specific issues i.e. issue Nos.4 & 6 have been framed by the then Ld. CJJD, Ludhiana. To dismiss a suit at the threshold, without proceeding to record further evidence, and conducting a trial, would amount injustice to the plaintiff. In view of the above discussion, the instant application for rejection of plaint stands dismissed being devoid of merit in the interest of justice. Any observation made while deciding this application shall have no merits on this case.”

9. It is well establish principle of law that, at the time of considering the application under Order 7 Rule 11 CPC, only the averments of plaint are required to be considered, and no other material. For this view, I am fortified by the observations of Hon’ble the Supreme Court made in **‘Saleem Bhai and others Vs. State of Maharashtra and others’, 2003(1)**

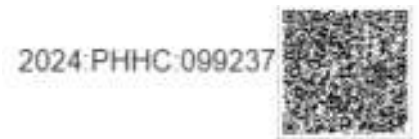


RCR (Civil) 464, where in para No 8, it is held as under:-

“8. A persual of Order 7 Rule 11 C.P.C. make it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 C.P.C. at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non- exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

10. Having reviewed the order of the learned Trial Court, this Court finds no illegality in the same. The learned Trial Court correctly observed that the averment made by the petitioner/ defendant in the written statement cannot be considered when delving upon the application under Order 7 Rule 11 CPC, only the contents of the plaint are to be considered and not the defence. Furthermore, determining the cause of action for the plaintiff to file the suit involves evidence, as the issue is a mixed question of fact and law.

11. For the reasons mentioned above, this Court finds no ground warranting any intervention by this Court in the judicious discretion exercised by the learned Trial Court.



- 12. The revision petition stands dismissed.
- 13. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 01, 2024
d.gulati

(RITU TAGORE)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No