



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

140

CR-4078-2024
Date of decision : 23.07.2024

Ajay Srivastava Petitioner

versus

Kamal Sharma and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sukhwinder Singh Sudan, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. This is a revision petition filed by defendant impugning the order dated 06.02.2024, whereby application filed under Order 7 Rule 11 read with Section 151 CPC seeking rejection of the plaint has been rejected.
2. Plaintiff filed suit seeking recovery of Rs.9,27,596/- against his former employer claiming that he is entitled for the amount under various heads including salary for the month of May 2013, June 2014, July 2013 etc. and the liabilities admitted as Form 26 AS stands submitted with the Income Tax Department, yet his claim is being rejected by the defendant.
3. Petitioner who has been arraigned as defendant No.3 filed application under Order 7 Rule 11 CPC claiming rejection of plaint, the same stands rejected.
4. Counsel for the petitioner while assailing the order has drawn attention of this Court to the memo of parties in the plaint wherein

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defendant No.1 has been mentioned as 'M/s. Givo Pvt. Ltd'. He further relies upon appointment letter which has been placed on record as Annexure P-3 as per which the appointment letter was issued by M/s. Givo Ltd. He thus submits that M/s. Givo Pvt. Ltd. and its official including the present petitioner have been wrongly arraigned and there is no cause of action qua them. Further refers to Order 1 Rule 9 of the Code of Civil Procedure to submit that the suit is barred on account of misjoinder of necessary parties and thus would fall within the ambit of Order 7 Rule 11A and D. He further refers to documents placed on record as Annexures P-8 and P-9 to submit that M/s. Givo Pvt. Ltd. and M/s. Givo Ltd. are different entities.

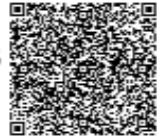
5. In the considered opinion of this Court, Annexures P-8 and P-9 cannot be considered at this stage as trite it is that for deciding application under Order 7 Rule 11, it is only the averments in the plaint that need to be seen. The appointment letter definitely shows that it is 'M/s. Givo Ltd.' and not 'M/s. Givo Pvt. Ltd.' The question is however whether the plaint can be rejected on the said ground. Order 7 Rule 11 CPC reads as under:-

“Rejection of plaint.

The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by

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the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6. Order 1 Rule 9 reads as under:-

“Mis-joinder and non-joinder.

No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.”

7. The precise question with respect to invocation of Order 7 Rule 11 Code of Civil Procedure to reject the plaint on the basis of non-joinder of necessary parties came up before Supreme Court in the case of ***Prem Lala Nahata vs. Chandi Prasad Sikaria (2007) 2 SCC 551***, wherein the Apex Court held as under:-

“xx xx xx

21. The legal position in an identical situation as ours has been considered by a learned judge of that Court in *Assembly of God Church vs. Ivan Kapper & Anr.* [2004 (4) CHN 360]. The learned judge has held that a defect of misjoinder of parties and causes of action is a defect that can be waived and it is not such a one as to lead to

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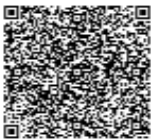


the rejection of the plaint under Order VII Rule 11(d) of the Code. As we see it, the said decision reflects the correct legal position. The decision in *Margo Trading* [Suit No.242 of 1995 dated 30-10-1995 (Cal)] does not lay down the correct law. The decision of this Court in *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express* [(2006) 3 SCC 100] does not touch on this aspect and is concerned with a case of suppression of material facts in a plaint.”

8. The Order 7 Rule 11(d) provides for rejection of plaint, where suit is barred by any law. Under Code of Civil Procedure, there is no prohibition or prevention to the filing of the suit which can be said to be defective for mis-joinder of parties. It is in these circumstances that the Supreme Court held that under the scheme of the 1908 Code, the suit cannot be held to be barred for mis-joinder of parties. Trite it is that a procedural objection to the impleading of parties can be urged as a procedural objection and the Court has a discretion either to permit the continuance of the suit as it is or direct the plaintiff to elect to proceed with the part of the suit or to give up the party against whom relief is not claimed or to give up the relief against the party which has not been impleaded.

9. In view of above, it may be a case wherein the petitioner may move an application seeking deletion of his name from the array of parties. It is definitely not a case for rejection of plaint. Apart from this, counsel does not dispute that defendant No.2 also moved an application seeking rejection of plaint earlier in time on the same ground, which was rejected.

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10. In view of above, present petition stands dismissed.

(PANKAJ JAIN)
JUDGE

23.07.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No