



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CR-4478-2024 (O&M)
Date of Decision: 27.08.2024

RAJ KUMAR

...Petitioner

Versus

**CHANDER KANTA (SINCE DECEASED) NOW REPRESENTED BY
SOHAN LAL AND ANOTHER**

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Naveen Gupta, Advocate
for the petitioners.

VIKAS SURI, J. (ORAL)

1. This revision petition under Article 227 of the Constitution of India has been filed by the petitioner-tenant for setting aside order dated 23.07.2024 (Annexure P-4) passed by the learned Rent Controller, Kaithal, whereby the application moved by him under Order 7 Rule 11 CPC, has been dismissed.

2. On a query of the Court with regard to maintainability of the instant petition under Article 227 *ibid*, learned counsel for the petitioner has submitted that the impugned order is revisable under Section 15(6) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, 'Rent Act'), and he prays that the present petition be considered under the said provision.



3. Briefly stated, respondent No.1-landlord filed a rent petition along with respondent No.2 seeking ejectment of the petitioner-tenant from the demised premises. Smt. Chander Kanta is stated to be the landlord-owner.

3.1 Upon notice, the eviction petition was contested by filing reply and accordingly, the issues were framed. The landlord tendered his affidavit for examination-in-chief and when the case was at the stage of cross-examination, the petitioner-tenant moved an application under Order 7 Rule 11 CPC for rejection of the rent petition. The said application was opposed by the respondents herein, by filing reply. On considering the matter, learned Rent Controller dismissed the said application by observing as under:-

“From the perusal of the application and pleadings, it can be seen that petitioner No.2 namely, Nikhil Mittal is grandson of petitioner No.1(Smt. Chander Kanta) and premises in question are required by petitioner No.1 for the bonafide personal need of petitioner No.2. Whether petitioner No.2 has locus standi to file the present ejectment petition or not, is a question of fact which can be decided by Court after both the parties have led their evidence. The adjudication regarding right of petitioner No.2 to file the present petition cannot be made in an application under Order 7 Rule 11 CPC 1908. Hence, in view of foregoing, the applications under Order 7 Rule 11 Code of Civil Procedure, 1908 is, hereby, dismissed. Now, to come up on 17.07.2024 for filing written statement on behalf of defendants. Nothing contained in this order shall have any effect on the merits of this case.”

4. Learned counsel for the petitioner has argued that in terms of Section 13 of the Rent Act, it is only the landlord who can seek ejectment of the tenant and respondent No.2 does not qualify the stipulated condition of ‘landlord’ defined under Section 2 (c) of the Act *ibid*.



5. Heard learned counsel for the petitioner and with his able assistance perused the record.

6. It is not disputed that while considering an application under Order 7 Rule 11 CPC, only the averments made in the plaint/rent petition are to be seen. A perusal of the rent petition (Annexure P-1) would show that Smt. Chander Kanta (the first applicant in the rent petition) has pleaded herself as the landlord/owner of three shops adjoining each other, i.e. shop Nos.281/17 and 282/17 and the demised premises being shop No.283/17. It is categorically mentioned therein that the shops bearing Nos. 282/17 and 283/17 are in possession of the petitioner as tenant. It is further pleaded in para 5 of the rent petition that respondent No.2 is the grandson while respondent No.1 is the grandmother and they are joint in mess and residence. The eviction has been sought on the ground of personal necessity of respondent No.2, to run his medical practice.

7. It is trite law that a plaint cannot be partially rejected. The plaint is to be rejected as a whole or not at all. Thus, the powers under Order 7 Rule 11 CPC cannot be exercised to reject only a part of the plaint. If the cause of action survives for a part of the claim in the plaint for any of the plaintiffs, against any of the defendants, the suit as a whole must go to trial and cannot be rejected at the threshold. The aforesaid principle of law has also been recently explained in *Geetha, D/o Late Krishna and Others vs. Nanjundaswamy and Others*, 2023 SCC Online SC 1407, wherein the ratio in *Sejal Glass Limited vs. Navilan Merchants Private Limited*, (2018) 11 SCC 780 and *Madhav Prasad Aggarwal and another vs. Axis Bank Limited*



***and another*, (2019) 7 SCC 158**, has been followed. The relevant portion from the above judgment is reproduced hereunder:

7. In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.

... ..

12. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in *Maqsd Ahmad v. Mathra Datt & Co.* [AIR 1936 Lah 1021]. This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.* [(2018) 11 SCC 780], which was again followed in *Madhav Prasad Aggarwal v. Axis Bank Ltd.* [(2019) 7 SCC 158]. The relevant portion of *Madhav Prasad* (supra) is extracted hereinunder:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint



disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

...

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...

(emphasis supplied)

13. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.



8. The only argument raised before this Court that the second applicant in the rent petition, not being a 'landlord' under the Rent Act, cannot maintain and prosecute the eviction petition, is liable to be rejected in view of the settled law in ***Geetha's case*** (supra).

9. In view of the above discussion, this Court does not find any illegality or perversity in the impugned order dated 23.07.2024, warranting interference in exercise of revisional jurisdiction.

10. The present petition being bereft of merit, is accordingly dismissed.

August 27, 2024

shruti/sumit.k

(VIKAS SURI)
JUDGE

Whether Speaking / Reasoned :	Yes/No
Whether Reportable :	Yes/No