



CR-588-2023 (O&amp;M)

Date of Decision : 21.07.2025

Mohan Sham Verma alias Mohan Sham

... Petitioner

Versus

Jaideep Singh Bedi and Others

... Respondents

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

Present : Mr. Ramnish Puri, Advocate for the petitioner.

None for the respondents.

**ALKA SARIN, J. (Oral)**

1. Present revision petition has been filed by the plaintiff-petitioner challenging order dated 07.10.2022 whereby an issue qua the maintainability of the suit has been framed and the onus has been cast upon the plaintiff-petitioner and further challenging order 12.01.2023 vide which the application filed by the plaintiff-petitioner under Order XIV Rule 5 read with Section 151 CPC has been dismissed.

2. None has put in appearance on behalf of the respondents, despite service hence they are accordingly proceeded against *ex parte*.

3. The brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for permanent injunction for restraining the defendant-respondents, their agents, attorneys etc. from handing over blank signed stamp papers and blank signed security cheques of the plaintiff-petitioner to any other person other than plaintiff-petitioner as also for

restraining the defendant-respondents from presenting to the Bank for encashment, blank signed security cheques of the plaintiff-petitioner. Separate written statements were filed by defendant-respondent No.1 and defendant-respondent Nos.2 and 3. Replication was also filed to both the written statements. On the basis of pleadings of the parties, vide order dated 07.05.2018, following issues were framed :

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiffs is not legally maintainable ? OPD
3. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court ? OPD
4. Whether the suit of the plaintiff is without any cause of action ? OPD
5. Whether the plaintiff has no locus standi to file the present suit ? OPD
6. Whether the present suit is bad for mis joinder of necessary parties ? OPD
7. Relief.

4. Thereafter, an application was filed by the defendant-respondents (Annexure P-7) under Section 151 CPC for dismissal of the suit. On 07.10.2022 the Trial Court passed the following order :

*“Today also reply to the application under section 151 CPC for dismissal of the suit has not been filed. I am of the view that sufficient delay has been caused in filing the reply to the said application. Accordingly the right to file reply stands struck off. Heard. In the application under section 151 CPC the defendant has prayed for dismissal of the suit on the ground that the present suit is legally not maintainable and the plaintiff has no locus standi and cause of action to file the present suit. Accordingly, I am of the view that a preliminary issue with regard to maintainability of the suit is required to be framed and adjudicated upon before proceeding further. Accordingly, the following preliminary issue is framed:-*

*1. Whether the present suit is legally maintainable? OPP*

*The plaintiff is directed to bring evidence if any on 21.10.2022 on the above issue.”*

5. An application was filed by the plaintiff-petitioner under Order XIV Rule 5 read with Section 151 CPC which application was dismissed vide order dated 12.01.2023. Aggrieved by the same the present revision petition has been filed.

6. Learned counsel for the plaintiff-petitioner would contend that without there being any application for reframing of the issues, an additional issue has been framed as a preliminary issue as to whether the suit was legally maintainable, and the onus has been cast upon the plaintiff-petitioner. However, vide order dated 07.05.2018 the issue framed was *“Whether the*

*suit of the plaintiffs is not legally maintainable ? OPD*” and the onus was cast upon the defendant-respondents. It is further the contention of learned counsel for the plaintiff-petitioner that once a party takes a stand that the suit was not maintainable, the onus to prove the same would be on the said party and not on the plaintiff. It is further the contention that in any case on an application under Section 151 CPC for dismissal of the suit, the present issue could not have been framed.

7. Heard.

8. In the present case the issues had already been framed vide order dated 07.05.2018. On 07.10.2022, a fresh issue has been framed i.e. *“Whether the suit of the plaintiffs is not legally maintainable ? OPP*” and the onus has been cast upon the plaintiff-petitioner. However, on 07.05.2018, the same issue was framed and the onus thereof was cast upon the defendant-respondents. It is not a case where the issue has been reframed for some reason. This is an additional issue which has been framed as a preliminary issue. It is not understandable as to how the same issue could be framed twice, once casting the onus on the defendant-respondents and in the second order, while framing the same issue as an additional issue, casting the onus on the plaintiff-petitioner. As per law laid down by Hon’ble Supreme Court in case of **Sathyanath & Anr. vs. Sarojamani [2022 (2) RCR (Civil) 957]**, the Trial Court has to record findings on all issues rather than only deciding a preliminary issue.

9. Subsequently, after passing of order dated 07.10.2022, an application was filed by the plaintiff-petitioners herein under Order XIV

Rule 5 CPC read with Section 151 CPC for reframing of the issue, which was dismissed vide order dated 12.01.2023.

10. Both the orders are unsustainable in law. Accordingly the order dated 07.10.2022 is set aside. Since the order dated 07.10.2022 has been set aside, no further orders would be required to be passed qua the order dated 12.01.2023 as the application on which the order was passed stands rendered infructuous. The Trial Court shall now proceed in accordance with the law.

11. The present revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

12. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

21.07.2025  
jk

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

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