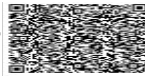
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****CR-875-2025 (O&M)****Date of decision: 13.08.2025****Prem Kumar****...Petitioner(s)****Vs.****Sanjeev Kumar Choudhary and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Lalit Bhardwaj, Advocate,
Mr. M.K.Malhotra, Advocate and
Mr. Jatin Anand Dwivedi, Advocate for the petitioner.

NIDHI GUPTA, J.

Present Civil Revision Petition has been filed by the defendant no.1 under Article 227 of the Constitution of India for setting aside the Order dated 29.10.2024 (Annexure P-1), whereby Application filed by the petitioner U/O VII Rule 11 R/W Section 151 CPC, in the Civil Suit no. CS/885/2021 titled "Sanjeev Kumar Choudhary Vs. Prem Kumar etc.", has been dismissed by the learned Civil Judge (Junior Division), Faridabad.

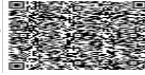
2. Brief facts are that the respondent no.1/plaintiff had filed a suit dated 17.03.2021 (Annexure P-2) seeking decree of permanent injunction restraining the petitioner/defendant No.1 from transferring the suit property to third party. It was the case of the plaintiff that petitioner had entered into an Agreement to Sell with the plaintiff vide emails dated 17.11.2020 and 20.11.2020. Written statement dated 25.10.2021 (Annexure P-3) was filed by the petitioner to the above said suit. Subsequently, petitioner had moved present application dated 01.07.2023



(Annexure P-5) under Order 7 Rule 11 CPC seeking rejection of the plaint for lack of cause of action. Respondent No.1 had filed reply dated 26.07.2024 (Annexure P-6) to the said application. Vide the impugned order dated 29.10.2024 (Annexure P-1), application of the petitioner under Order 7 Rule 11 CPC has been dismissed. Hence, present Civil Revision Petition by the defendant no.1.

3. It is *inter alia* submitted by learned counsel for the petitioner that the learned Court below was in patent error in dismissing the application under Order VII Rule 11 CPC as the petitioner had amply demonstrated that no cause of action was made out in the suit. It is submitted that the plaintiff is claiming ownership over the suit property on the basis of email-Agreement dated 17.11.2020. Learned counsel contends that no valid and lawful communication, proposal, acceptance or an Agreement/contract, either verbal or in writing was entered into between the plaintiff and the petitioner in respect of the suit plot in consonance with the provisions of The Indian Contract Act. It is further submitted that the emails between the petitioner and son of the plaintiff cannot be treated as contract of sale of suit property between the petitioner and the plaintiff. Therefore, no cause of action exists in favour of the plaintiff.

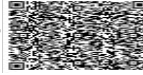
4. Moreover, the respondent no.1 has falsely alleged that a contract for sale of the property was entered into between the respondent no.1 and the petitioner. It is contended that this is borne out from the fact that even the purported Agreement to Sell dated 17.11.2020 has not been produced by the plaintiff. Clearly, therefore, no Agreement to Sell exists



between the parties on the basis of which respondent has filed the present suit. As such suit of the respondent/plaintiff was liable to be rejected under Order 7 Rule 11 CPC. When it is pointed out to learned counsel for the petitioner that in an application under Order 7 Rule 11 CPC only the averments made in the plaint can be considered, learned counsel submits that even as per the plaint, no cause of action is made out against the petitioner and therefore the suit of the plaintiff was liable to be rejected.

5. It is further submitted that impugned order could not have been passed, as no relief of specific performance has been claimed by the plaintiff. Learned counsel reiterates that the impugned order 29.10.2024 passed by the Id. Civil Judge is bad in law as the respondent no.1 has filed only the Suit for Permanent Injunction without claiming the relief of Specific Performance of Contract. It is argued that it is well settled law that an injunction is an equitable relief and the same cannot be granted in a suit for permanent injunction without seeking the principal relief of Specific Performance of contract. Hence on this ground the impugned order is liable to be set aside.

6. In support, learned counsel relies upon a judgment passed by Hon'ble Supreme Court in ***"Correspondence, RBANMS Educational Institution vs. B. Gunashekhar and another," Law Finder Doc Id # 2719847.*** He accordingly prays that the present Revision Petition be allowed; and the impugned order be set aside.

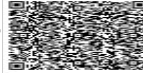


7. No other argument is raised on behalf of learned counsel for the petitioner. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the petitioner.

8. The respondent no.1 had filed a suit dated 17.03.2021 (Annexure P-2) seeking permanent injunction restraining the defendants from transferring the suit plot. It has been contended by the petitioner that no Agreement to Sell has been entered into between the parties, as no such Agreement has been produced by the plaintiff. However, this assertion of the petitioner is found to be incorrect as it has been averred in paras 2 and 3 of the plaint (Annexure P-2) as under:-

"2. That the defendant entered into an Agreement to sell in favour of plaintiff in respect of above said plot No. 3327, Block-C, Green Field Colony, Faridabad by way of mail dated- 17th November 2020 and mail dated-20th November 2020 as due to corona pandemic the defendant No.1 could not physically come to Faridabad therefore the defendant No. 1 had requested to entered the agreement through mails and at the same time as per the agreement had received an amount of Rs. 50000/- (Fifty Thousand) as earnest money by way NEFT no-PUNBH20342313713 through cheque no. 122995 dated 07.12.2020. It is further pertinent to mention here that the deal has been finalization and the defendant no.1 further clarified that as and when he will required the money will inform plaintiff accordingly and the entire conversation pertaining to finalization of deal, finalization of rates, commission of dealer and time of payment and checking of documents is clearly recorded in the mobile phone of Mr. Sanjay Wadhwa who is broker in this deal.

3. That it is pertinent to mention here that rates had been finalized through phone calls and recording of the same is also saved by Mr. Sanjay Wadhwa dealer of this transaction and as per the



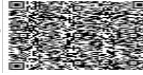
request of the defendant the plaintiff has also sent the final agreements of sell to the defendant by way of mail.”

9. It has further been stated in the plaint that out of the total sale consideration of Rs.72,000/- per sq. yd., an amount of Rs.50,000/- was received by the petitioner as earnest money in his account by way of NEFT transaction no. PUNBH20342313713 through cheque no. 122995 dated 07.12.2020. The details of the account of the petitioner were conveyed to the plaintiff by the petitioner himself by way of copy of cancelled cheque given by the petitioner to the plaintiff for transfer of earnest money.

10. It has further been contended by the petitioner that the plaint reveals no cause of action. However, even the said assertion is incorrect as, in para 12 of the plaint, it has been stated as under: -

“12. That the cause of action to file the present suit accrued on different dates and the cause of action is continuous one and is finally accrued on 05-01-2021 when finally the defendants refused to accede the legitimate request of plaintiff to get the sale deed executed in favour of the plaintiff by way of sending the reply of legal notice of the plaintiff, therefore the present suit is necessary for the plaintiff to prove his rights.”

11. A bare reading of the abovesaid averments/pleadings demolishes the argument of the petitioner that the plaint discloses no cause of action. Further, in attempting to substantiate his argument, learned counsel for the petitioner has sought to refer to various documents. However, it is an established position in law that at the stage of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The Hon’ble Supreme Court in numerous



judgments including “**Eldeco Housing and Industries Ltd. Vs. Ashok Vidyarthi & Others**” (SC) : **Law Finder Doc ID # 2406865**, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding an application under Order 7 Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order 7 Rule 11 CPC. In “**Kamala & Others Vs. K.T. Eshwara Sa & Others**” 2008 (12) **SCC 661**, it is held that in an application under Order 7 Rule 11 CPC, no evidence can be looked into; issue on merits of the matter would not be within the realm of the Court at that stage; and the Court would not decide any evidence or disputed question of fact or law. Whether or not, there exists a cause of action in the present case is a mixed question of fact and Law, which can only be determined by trial upon leading of evidence.

12. Further, the petitioner can derive no benefit from the relied upon judgment **B. Gunashekar** supra as the same is distinguishable on facts and law. In the said case the suit was filed by the respondents therein against the appellant before the Hon’ble Supreme Court seeking permanent injunction restraining the appellant from creating any third-party interest of suit property. The suit of the respondent-plaintiff therein, was based on an alleged agreement to sell executed between the respondents *and persons who were not parties to the suit*. Thus, there was no privity between respondents and appellant therein; which is not so in the present case.



13. In view of the above, no ground is made out to set aside the impugned order dated 29.10.2024 (Annexure P-1). Present Civil Revision Petition is hereby **dismissed**.

14. Pending application, if any, stands disposed of.

13.08.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No