



133

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

CR-2911-2024 (O&M)

Date of Decision : 28.08.2025

GROUP CAPT. (Retd.) T.P. SRIVASTAVA

.... Petitioner

VERSUS

DEBANWEETA SAHU AND ANR

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Manoj Loomba, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 15.03.2024 (Annexure P-17) passed by the learned Civil Judge (Junior Division), Gurugram dismissing the application filed by the defendant No.1-petitioner under Order VII Rule 11 CPC.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for permanent injunction as well as mandatory injunction wherein the following prayers were made :

*'a. Pass a decree of permanent/mandatory injunction
thereby directing the defendant No.1 and his agents,
assignees, servants, successors or whosoever working or,
their behalf to repair the drainage system and pipe lines
to stop the seepage caused to the suit property i.e. B-404,
BPTP, Park Serene, Sector-37/D, Gurugram – 122001*

Master Bedroom Ceiling, master bedroom walls, master bedroom balcony, kitchen shaft balcony, dining hall wall, guest room wall and guest room balcony; and

b. Pass a decree of permanent injunction thereby directing the defendant No.1 and his agents, assignees, servants, successors or whosoever working or, their behalf to repair his own property bearing No.B-504, BPTP Park, Sector-376/D, Gurugram – 122001; and

3. Pass a decree of mandatory injunction thereby directing the defendant No.2 his agents, assignees, servants, successors or whosoever working or, their behalf to oversee the repair is being to the damage caused to the suit property and defendant No.1 property under its supervision; and

d. Award costs of the suit of the plaintiff.

e. Pass any other order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case'.

The defendant No.1-petitioner herein filed written statement and also filed reply to the application under Order 39 Rules 1 and 2 CPC. Subsequently, an application was filed under Order VII Rule 11 CPC for rejection of the plaint on the ground that no cause of action was made out. Reply was filed to the said application. Vide the impugned order dated 15.03.2024 the said

application was dismissed. Hence, the present revision petition by the defendant No.1-petitioner herein.

3. Initially before this Court, since both the defendant No.1-petitioner and the plaintiff-respondent No.1 are the residents of the same society, the matter was referred to the Mediation and Conciliation Centre of this Court. A report has been received from the Mediator wherein it has been stated that despite long hours of mediation, the parties were unable to resolve their dispute at this stage.

4. Learned counsel for the defendant No.1-petitioner would contend that there is no cause of action which is made out from a reading of the plaint. It is further the contention of the learned counsel that certain complaints were made regarding the seepage, which as per the documents appended with the plaint itself, stood attended to and resolved. Learned counsel has further referred to a report of an expert which has been relied upon and referred to in para No.14 of the plaint. It is the contention of the learned counsel that the said report has been prepared giving an estimate of the repairs to be done in the flat owned by the plaintiff-respondent No.1 and the flat owned by the defendant No.1-petitioner. It is the contention that the said report has been prepared without so much as visiting the house of the defendant No.1-petitioner hence the same cannot be relied upon. Learned counsel has further contended that though the leakage is stated to have taken place in 2021, yet the legal notice was sent in 2022 after a period of 17 months and as such in the present case no cause of action is made out. Learned counsel has further argued that it is the society (defendant No.2-respondent No.2

herein) who is to maintain the premises i.e. the balcony from where the alleged leakage is supposed to have taken place and as such the society should have been made a party. Still further, it is argued that certain photographs have been appended, however certificate under Section 65-B of the Evidence Act, 1872 has not been appended.

5. Heard.

6. In the present case each one of the arguments raised by the learned counsel for defendant No.1-petitioner is qua the factual matrix of the dispute. On the face of it, *ex facie* from the arguments raised by the learned counsel for the defendant No.1-petitioner, there appears to be a dispute regarding the factual aspect. Learned counsel for the defendant No.1-petitioner while addressing arguments on an application under Order VII Rule 11 CPC has dissected every single paragraph of the plaint stating that factually incorrect statements have been made. Order VII Rule 11 CPC reads as under:

Order VII

11. 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 the Court, fails to do so;

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

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

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.

The Court while deciding the application under Order VII Rule 11 CPC is to see whether on a meaningful reading of the plaint a cause of action is disclosed. In the present case on a meaningful reading of the plaint a cause of action is made out inasmuch as the allegations by the plaintiff-respondent No.1 are that there has been a seepage in the flat where she is residing and the seepage is coming from the flat which is above her flat which is owned by the defendant No.1-petitioner herein. There are instances of the seepage which

have been in enumerated in the plaint. Whether they are factually correct or incorrect is not to be gone into at the stage of deciding an application under Order VII Rule 11 CPC. Further, whether the factual averment is correct or incorrect cannot be decided at this stage but would have to be decided once the evidence has been led by the parties. Learned counsel for the defendant No.1-petitioner has also argued that a report of an expert has been appended without so much as visiting the premises of the defendant No.1-petitioner herein. These are not the issues which a Court can go into at the time of deciding an application under Order VII Rule 11 CPC. Even the issue raised by the learned counsel for the defendant No.1-petitioner regarding the non-furnishing of the certificate under Section 65-B of the Evidence Act, 1872 cannot be gone into at this stage since the evidence is yet to be led and it is only when the evidence is led that the requirement of furnishing a certificate would be considered. The argument of the learned counsel for the petitioner that the society ought to have been impleaded is noticed only to be rejected as the society is impleaded as defendant No.2.

7. In view of the above, I do not find any merit in the present revision petition and the same being devoid of any merits is accordingly dismissed. Pending applications, if any, also stands disposed off.

8. Needless to say, any observation made herein shall not be treated as an expression of opinion on the merits of the case.

28.08.2025

Aman Jain

NOTE:

(ALKA SARIN)

JUDGE

Whether speaking/non-speaking: Speaking

Whether reportable: Yes/No