



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

274/2)

Date of Decision: 26.03.2025

1)

CR-7383-2023 (O&M)

Sunita Verma

...Petitioner

V/s

Rajni Verma and others

...Respondents

2)

CR-7271-2024 (O&M)

Sunita Verma and others

...Petitioners

V/s

Rajni Verma and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rahul Soi, Advocate, for
Mr. Suhir Hooda, Advocate,
for the petitioners (in both the petitions).

Mr. Vivek Suri, Advocate
for the respondents (in both the petitions).

VIKRAM AGGARWAL, J (ORAL)

This judgment shall dispose of the afore-titled revision petitions, both arising out of the same civil suit between the same parties, though assailing different orders. The facts, however, are being primarily derived from CR-7383-2023, titled as ***Sunita Verma V/s Rajni Verma and others.***

2. This bitter litigation is between a helpless and unfortunate mother of deceased Nitin Verma and his equally unfortunate widow and minor son.

3. Nitin Verma was the son of Sh. Krishan Lal Verma and Smt. Sunita Verma. His marriage was solemnized to Rajni Verma. From the wedlock, a son (Shrim) was born. Nitin Verma unfortunately expired on 11/12.07.2021 apparently after having suffered some illness. It is after this that parties fell apart. The reason for falling apart was once again money.



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Nitin Verma had an insurance policy with ICICI Prudential Life Insurance Co. Ltd, having been issued in September 2016 for a period of 39 years. Half yearly premium was being paid regularly by Nitin Verma. As per Rajni Verma, she was the nominee in the said insurance policy, whereas, as per Sunita Verma, she was the nominee. The insurance company paid Rs.60 lakhs to Smt. Sunita Verma as in their records, Smt. Sunita Verma was the nominee.

4. This led to the filing of a suit (Annexure P-1) by Rajni Verma and Shrim (minor son) (hereinafter referred to as the “plaintiffs”) against Sunita Verma, her two sons Love Verma and Sumit Verma and the insurance company (hereinafter referred to as the “defendants”) under Order 37 of the Code of Civil Procedure, 1908 (for short the “CPC”) for recovery of Rs.60 lakhs. Detailed averments were made in the suit, which are not relevant for the purpose of decision of the present revision petitions.

5. An application under Order 37 Rule 2 CPC (Annexure P-2) was moved by the defendants for the grant of leave to defend. The application was allowed by the learned trial Court subject to providing of security before filing the written statement. Aggrieved by the same, the present revision petition has been preferred.

6. After the aforesaid order was passed, an application under Order 7 Rule 11 CPC for rejection of the plaint (Annexure P-2 in CR-7271-2024) was filed. It was averred in the application that the suit was not maintainable under Order 37 CPC. The application was opposed by way of reply (Annexure P-3 in CR-7271-2024) stating that once an application for leave to defend had been filed, an application for rejection of the plaint was not maintainable. This application was dismissed vide order dated 13.08.2024 leading to filing of CR-7271-2024.



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7. I have heard learned counsel for the parties.
8. Learned counsel for the petitioners submits that the impugned orders are not sustainable. As regards the order vide which the leave to defend was granted, it has been submitted that there was no occasion for the trial Court to impose the condition of furnishing security before filing the written statement. As regards the order rejecting the application under Order 7 Rule 11 CPC, it has been submitted that the suit itself was not maintainable.
9. Learned counsel has referred to the provisions of Order 37 CPC and has also referred to the impugned orders. He submits that the said orders are not sustainable.
10. *Per contra*, learned counsel representing the respondents No.1 and 2 (contesting respondents) submits that there is no illegality in the orders. He has also referred to the provisions of Order 37 CPC as also the provisions of Order 7 Rule 11 CPC and submits that both the orders were passed in accordance with law.
11. I have considered the submissions made by learned counsel for the parties.
12. Order 37 Rule 1(2) CPC lays as under:-

“1. Courts and classes of suits to which the Order is to apply. (1)

This Order shall apply to the following Courts, namely:-

xxx xxx xxx

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising-

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty, or



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(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.”

13. In the considered opinion of this Court, the suit would fall under the provisions of Order 37 Rule 2 (b).

14. Still further Order 37 Rule 3(5) lays down as under:-

“(5) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just:

Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.”

15. Be that as it may, leave to defend as provided under Order 37 Rule 3(5) was granted and a condition was imposed that security would be furnished before filing of written statement. In the considered opinion of this Court, there is no illegality in the imposition of the said condition. For arriving at this conclusion, there are two reasons. One is that the bare provision provides that such a condition can be imposed and the learned trial Court duly exercised the said power vested in it. I do not find any illegality or jurisdictional error in the same. The second reason is that all three i.e. the mother, widow and the minor son of Nitin Verma are Class I legal heirs. Their interests need to be protected. Neither can be the mother of the deceased left high and dry nor the widow and minor son. The learned trial Court, therefore, took a balanced approach and granted conditional leave to defend.



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16. Coming to the order vide which the application for the rejection of plaint was dismissed, the same also does not suffer from any illegality warranting interference. For arriving at this conclusion, there are two reasons. One is that a reading of the plaint does not lead one to the conclusion that the same was liable to be rejected under the provisions of Order 7 Rule 11 CPC. It is settled law that for rejecting a plaint, only the averments made in the plaint and the documents attached therewith can be perused. No defence, whether taken in the written statement or in the reply to the application for rejection of plaint can be considered. The second reason is that once the defendants themselves moved an application for permission for the grant of leave to defend, it is not understood as to how they would maintain an application for the rejection of plaint. No doubt, an application for the rejection of plaint can be moved at any stage. However, here the conduct of the defendants would become relevant. The application for the rejection of plaint was filed after conditional leave to defend was granted. The learned trial Court rightly opined that the application for the rejection of plaint appeared to have been filed with a view to avoid the furnishing of security. It, therefore, rightly rejected the application.

17. I do not find any reason whatsoever to interfere in the well reasoned orders passed by the learned trial Court.

18. That being so, the revision petitions are hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

March 26, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No