



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

125

CR-3792-2026 (O&M)

Date of decision: 05.05.2026

Rakesh Khanna @ Babbu

...Petitioner(s)

Vs.

Gulzari Lal Khanna

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rakesh Khanna @ Babbu, petitioner in person
through V.C.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by defendant No.2 seeking setting aside of the order dated 12.02.2026 (Annexure P-1) passed by learned Civil Judge (Junior Division), Faridkot; whereby application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint, has been dismissed.

2. Factual background of the case in chronological order is that:-

26.08.2016: The plaintiff/respondent had filed a Civil Suit for permanent injunction against the petitioner and other defendants on dated 26.08.2016 (Annexure P-5).

04.10.2016: Plaintiff had suffered statement (Annexure P-6) that compromise has been effected between the parties. As such, suit was dismissed as withdrawn vide order dated 04.10.2016 (Annexure P-6).



12.06.2020: Subsequently, plaintiff had filed fresh Civil Suit dated 12.06.2020 (Annexure P-7) for declaration against the defendants.

21.01.2025: Thereafter, Plaintiff had filed application dated 21.1.2025 (Annexure P-8) under Order 23 Rule 3 CPC for allowing the plaintiff to withdraw the said suit with permission to file afresh.

06.02.2025: Vide order dated 06.02.2025 (Annexure P-9), plaintiff was permitted to withdraw the suit with liberty to file again on the same cause of action.

13.02.2025: Accordingly, on 13.02.2025, present/fresh suit (Annexure P-4) was filed by the plaintiff for declaration.

11.04.2025: Petitioner had filed instant application (Annexure P-2) under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint.

17.10.2025: Petitioner had also submitted written argument dated 17.10.2025 (Annexure P-3) in support of the application under Order 7 Rule 11 read with Section 151 CPC.

12.02.2026: Vide the impugned order dated 12.02.2026 (Annexure P-1), the said application of the petitioner has been dismissed.

Hence, present Revision Petition.

3. It is *inter alia* submitted by the petitioner that the application (Annexure P-2) of the petitioner has been wrongly dismissed, and suit of the plaintiff deserves to be rejected as the present suit of the plaintiff is clearly an abuse of process of law. It is submitted that record reveals that plaintiff has successively filed and withdrawn suit on the same subject



matter, causing harassment to the defendants. Further, plaintiff has failed to disclose any valid cause of action. Allegedly first cause of action arose in 2016 and there is no fresh or continuing cause of action disclosed in the plaint. Thus, the plaint deserves to be rejected.

4. Suit of the plaintiff is also barred by limitation as withdrawal of the previous suits does not extend or restart limitation. It is submitted that petitioner in his application under Order 7 Rule 11 CPC (Annexure P-2) had duly raised all the above said objections and sought rejection of the plaint for the afore-stated reasons. However, the same has not been appreciated by learned Trial Court while passing the impugned order.

5. It is submitted that moreover, plaintiff has taken mutually destructive and contradictory pleas in successive suits. In the earlier suits filed in 2016 and 2020, the plaintiff categorically pleaded that he was in possession of the suit properties and sought protection of his possession by way of injunction. However, in the present suit, the plaintiff has taken a completely contradictory stand by alleging that he is entitled to possession of the same properties. Such mutually destructive pleadings clearly demonstrate that the plaint does not disclose a consistent or legally enforceable cause of action and is liable to be rejected.

6. Ld. Counsel for the petitioner further submits that the present suit is barred under Order 2 Rule 2 CPC. The plaintiff, in earlier proceedings, had claimed rights over additional properties and against several defendants. In the present suit, he has deliberately omitted



certain properties and parties without any explanation. Such selective litigation clearly amounts to splitting of cause of action and renders the present suit not maintainable.

7. The petitioner further submits that the plaintiff is guilty of abuse of process of law. The conduct of the plaintiff clearly shows a pattern that plaintiff is habitual of filing and withdrawing suits:

2016	→	suit filed and withdrawn after compromise
2020	→	fresh suit filed and withdrawn
2025	→	present suit filed

8. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

9. No other argument is raised on behalf of the petitioner. I have heard the petitioner and perused the case file in detail. I find no merit in the submissions advanced by the petitioner.

10. Perusal of the order dated 06.02.2025 (Annexure P-9) shows that plaintiff had been permitted to withdraw previous suit and also granted liberty to file fresh suit on the same cause of action as follows:

“7. The fact remains that the plaintiff has demonstrated a reasonable cause for seeking withdrawal, and the objections raised by the defendants do not negate the existence of formal defects that would warrant such withdrawal. The question before the court is not whether the plaintiff has previously engaged in other litigation but whether the present suit, as framed, suffers from defects that are substantial enough to warrant withdrawal with liberty. The fact that there has been inter se litigation between the parties does not ipso facto preclude the plaintiff from seeking



withdrawal under Order 23, Rule 3 CPC, if the requirements of the provision are met.

8. In view of the above discussion, the court finds that sufficient grounds exist for permitting the withdrawal of the suit with liberty to file the same afresh on the same cause of action. Accordingly, the application is allowed, and the plaintiff is permitted to withdraw the present suit with liberty to file a fresh suit on the same cause of action in accordance with law. File be consigned to the record room after due completion in all respects.”

11. In view of the above, present suit of the plaintiff (Annexure P-4) was prima facie maintainable as explicit permission had been granted to the respondent in the presence of the petitioner to file fresh suit on same cause of action. Nothing has been pointed out to this Court that aforesaid order has been challenged by the petitioner.

12. Moreover, it is established position in law that in an application under Order VII Rule 11 CPC, only the averments made in the plaint can be seen. The Hon'ble Supreme Court in numerous judgments including **Eldeco Housing and Industries Ltd. vs. Ashok Vidyarthi and others, Law Finder Doc ID # 2406865**, has repeatedly held that no evidence or merits of the controversy can be examined at the stage of deciding rejection of a plaint in an application under Order VII Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order VII Rule CPC. Again, in **Kamla and others vs. K.T. Eshwara Sa & Others, (2008) 12 SCC 661**, the Hon'ble Supreme Court opined that for invoking Order VII Rule 11 CPC, only the averments in the



plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. Reference is also made to a 3-Judge Bench judgment of Hon'ble Supreme Court in **"Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Others"** Law Finder Doc ID # **1865777**, wherein it is held that *"...In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken."* Thus, it has been categorically held that the grounds taken by the defendant as defence cannot be taken into account while rejecting a plaint under Order 7 Rule 11 CPC. Accordingly, all the aforesaid objections, defences, and pleas raised by the petitioner are a matter of trial and cannot be considered by the Civil Court at the stage of deciding an application of such nature.

13. Nonetheless, a perusal of the impugned order dated 12.02.2026 (Annexure P-1) shows that Id. Civil Judge has dealt with each argument and objection raised by the petitioner in comprehensive detail. Relevant extract of the impugned order dated 12.02.2026 (Annexure P-1) in paras 14, 15, 16 and 17 are as under: -

"14. Order II Rule 2 CPC applies when: previous suit and present suit are based on the same cause of action, plaintiff omitted to sue for relief which he was entitled to, omission was without leave of Court. This requires production and examination of previous plaints and reliefs claimed therein. Such enquiry is not permissible under Order 7 Rule 11 CPC because only plaint is to be seen. Thus, Order II Rule 2 CPC



cannot be made a ground for rejection unless the bar is evident from the plaint itself, which is not the case herein.

15. The plaint itself states that earlier suit was withdrawn on 06.02.2025 with liberty to file fresh on the same cause of action. Once permission under Order XXIII Rule 1(3) CPC is granted, the plaintiff is entitled to institute a fresh suit. Whether the plaintiff has expanded the scope of pleadings, changed parties or altered case is a matter of trial and evidence. This cannot be adjudicated under Order 7 Rule 11 CPC. Hence, the plaint cannot be rejected on this ground.

16. Defendant No. 2 has raised objection that since plaintiff seeks possession, suit should be valued at market value and ad-valorem court fee should be paid under Section 7(v) of Court Fees Act. The plaint shows that plaintiff has valued each property and pleaded that required ad-valorem court fee has been affixed. Even if there is deficiency, Order 7 Rule 11(b) and (c) mandate that: Court must first direct plaintiff to correct valuation or supply court fee, and rejection can follow only upon failure to comply. At present stage, there is no such failure. Therefore, rejection cannot be ordered.

17. The entire application filed by defendant No. 2 is based upon: alleged admissions in previous suits, alleged contradictions, alleged license fee, alleged suppression of facts, pending litigation. All such pleas are part of defence. It is settled law that while deciding Order 7 Rule 11 application, the Court cannot look into the written statement or defence material. Therefore, these issues can only be decided after framing of issues and evidence.”

14. The petitioner is unable to controvert or dispute the above said factual and legal position.

15. In view of the above, no ground is made out to interfere in the order dated 12.02.2026. The present Revision Petition stands **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

05.05.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(NIDHI GUPTA)
JUDGE