

(2022) 05 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3446 Of 2021 (O&M)

M/S Shimla Mandi Goods Transport Pvt. Ltd. And Others

APPELLANT

Vs

Jitender Gupta, Proprietor M/S Simla Mandi Goods Transport Company

RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 1 Rule 10, Order 7 Rule 11, Order 7 Rule 11(d)

Citation : (2022) 05 P&H CK 0146

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Sanjeev Sharma, Sandeep Singh, Chetan Mittal, Harsh Bunger

Final Decision : Dismissed

Judgement

Alka Sarin, J

The present civil revision has been preferred by the defendant-petitioners impugning the order dated 06.12.2021 (Annexure P-7) passed by the District Judge, Panchkula whereby the application filed by them under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondent filed a civil suit for injunction for restraining the defendant-petitioners from passing off, infringement of trademark, infringement of copyright, acts of unfair competition, dilution, rendition of accounts, damages, etc. The plaintiff-respondent claims himself to be the proprietor of M/s Simla Mandi Goods Transport Company which is engaged in transportation services. It was alleged that that defendant-petitioner Nos.2 and 3 had started a new company under the name and style of "Shimla Mandi Goods Transport Pvt. Ltd." (defendant-petitioner No.1) and had started a new business under an identical name to that of the transport firm of the plaintiff-respondent under a nearly identical, deceptively similar trade mark

as that of the plaintiff-respondent and had copied the entire get-up, lay out, overall appearance and all the unique features of the business of the plaintiff-respondent.

The defendant-petitioners filed an application (Annexure P-5) for rejection of the plaint under Order VII Rule 11(d) CPC stating therein that the plaintiff-respondent had wrongly claimed himself to be the sole proprietor of M/s Simla Mandi Goods Transport Company (Regd.) and that the said firm consisted of two partners namely, Jitender Gupta (plaintiff-respondent) and his brother namely, Rajinder Gupta. Both of them had 50% share in the firm and on the death of Rajinder Gupta on 02.05.2021 he left behind three legal heirs i.e. his wife, son and daughter. It was further averred in the application that the plaintiff-respondent had not disclosed as to how after the death of Rajinder Gupta he had assumed the status of sole proprietor of the firm. According to the defendant-petitioners the suit was in contravention of the provisions of the Indian Partnership Act, 1932 and was barred by law. Reply (Annexure P-6) to the application under Order VII Rule 11 CPC was filed by the plaintiff-respondent. However, before the application under Order VII Rule 11 CPC could be disposed off, the legal heirs of the deceased partner, Rajinder Gupta, moved an application under Order I Rule 10 CPC for being impleaded as a party to the suit.

While dismissing both the applications vide the impugned order dated 06.12.2021, the District Judge, Panchkula observed that the legal representatives of Rajinder Gupta had filed a civil suit before the Delhi High Court on the original side bearing Civil Suit No.CS(OS) 563 of 2021 titled "Ritu Gupta and Others vs. Jitender Gupta and Others" for relief of partition, rendition of accounts, declaration besides permanent and mandatory injunction against the defendants therein who includes the plaintiff-respondent in the present suit namely Jitender Gupta as also his wife and two firms including M/s Simla Mandi Goods Transport Company. In the said civil suit before the Delhi High Court no interim relief has been granted restraining the present plaintiff-respondent from acting as a sole proprietor of the firm.

Learned senior counsel appearing for the defendant-petitioners contended that the District Judge, Panchkula erred in dismissing the application under Order VII Rule 11 CPC on illegal and erroneous grounds. According to counsel, the plaintiff-respondent had no locus standi to file the suit as a sole proprietor after the death of the other partner since the partnership firm stood dissolved on the death of the second partner. It was further submitted that even the Delhi High Court had prima facie not accepted the status of the plaintiff-respondent as a sole proprietor and had therefore passed an interim order dated 28.10.2021 (Annexure P-11).

Per contra, learned senior counsel appearing for the plaintiff-respondent has urged that for deciding the application under Order VII Rule 11 CPC only the plaint has to be read. He further submitted that the defendant-petitioners cannot question the locus standi of the plaintiff-respondent to file the suit as sole

proprietor and any objection in this respect could only be raised by the heirs of the deceased partner.

I have heard learned counsel for the parties and perused the paper-book.

It is trite that on an application under Order VII Rule 11 CPC only the contents of the plaint along with the documents filed with the plaint are to be seen. Neither the written statement nor the averments made in the application can be considered for rejecting the plaint under Order VII Rule 11 CPC. The Court while exercising powers under Order VII Rule 11 CPC is required to see whether the averments as made in the plaint are contrary to statutory law or barred by any law and whether a case is made out for rejecting the plaint at the very threshold. On a meaningful reading of the plaint, if it is found that the same is vexatious and does not disclose any right to sue or is barred by any law, the Court would exercise its power under Order VII Rule 11 CPC. It has been held by the Supreme Court in the case of Chhotanben & Anr. vs. Kiritbhai Jalrushnabhai Thakkar & Ors. [2018(5) RCR (Civil) 163] that :

"12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us."

Yet again in the case of Urvashiben & Anr. vs. Krishnakant Manuprasad Trivedi

[2019(1) RCR (Civil) 366], it has been held as under:

"15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC."

The present suit is for restraining the defendant-petitioners from passing off and for infringement of trademark and copyright and related reliefs. The grounds for rejection of the plaint as canvassed in the application under Order VII Rule 11 CPC and argued before this Court are not apparent from a meaningful reading of the plaint. Neither the averments made in the application nor in the written statement can be seen at the time of deciding an application under Order VII Rule 11 CPC. Suffice it to say that on a meaningful reading of the plaint, keeping in view the law laid down by the Hon'ble Supreme Court, no ground for rejection of the plaint is made out. At the threshold, on an application under Order VII Rule 11 CPC, the alleged violation of the provisions of the Indian Partnership Act, 1932 cannot be gone into by the Court without any evidence having been led especially when on a meaningful reading of the plaint none of grounds mentioned in Order VII Rule 11 CPC stand established. A civil suit is already pending in the Delhi High Court between the legal representatives of the deceased partner, Rajinder Gupta, and the plaintiff-respondent. The issues inter-se the said parties would be gone into in the civil suit pending in the Delhi High Court.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.