
(2005) 08 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4071 of 2005

Rajesh Grover

APPELLANT

Vs

Smt. Rita Khurana and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 6 Rule 17, Order 7 Rule 11,
Order 7 Rule 2
Income Tax Act, 1961 — Section 230A

Citation : (2006) 3 CivCC 15 : (2006) 4 CivCC 39 : (2006) 143 PLR 244 :
(2005) 4 RCR(Civil) 721

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This is a revision petition under Article 227 of the Constitution of India challenging order dated 3.6.2005 passed by

the Additional Civil Judge (Senior Division), Gurgaon whereby application for rejection of plaint filed by the petitioner under Order 7, Rule 11 of

the CPC (for short ""the Code"") has been declined.

2. It has been averred in the petition that suit No. 684/1996-97 ""Vinod Khurana v. Rajesh Grover and others"" was filed on 5.12.1996. The reliefs

claimed in the said suit were:

a) The agreement to sell dated 18.10.1996 in respect of the suit property should remain to subsist till the defendants (petitioner herein) complete

the statutory obligation.

b) A decree for mandatory injunction be also passed directing the defendants to obtain income tax clearance or to sign requisite papers to get the

income tax clearance u/s 230-A(1) of Income Tax Act.

c) to get the property in dispute mutated in their name.

d) a decree for permanent injunction be issued against the defendants (petitioner herein).

3. The plaintiff in the said filed an application for amendment of plaint under Order 6, Rule 17 of the Code claiming relief of damages of Rs. 16 lacs

and/or its set off from the remaining balance of sale consideration. The said application was filed on 10.3.1997.

4. It is not in dispute that previous suit No. 684/1996-97 was got dismissed as withdrawn without seeking any liberty from the Court to file a fresh suit on the same cause of action.

5. It has further been averred in the petition that during the pendency of earlier suit, the present suit for recovery of- Rs. 8,84,000/- was filed on

17.2.2000 based upon the agreement to sell dated 18.10.1996 in respect of the same property i.e. House No. K-7/42 situated in DLF Qutab

Enclave Complex, Phase II, Gurgaon.

6. It had been pleaded in the present suit that the defendant had undertaken to obtain income tax clearance certificate. It had further been pleaded

that since the defendants broke the agreement by their own act and conduct and failed to obtain income tax clearance certificate in favour of the

plaintiffs, the plaintiffs had become legally entitled to recover the amount of Rs. 6,50,000/- with interest at the rate of 12.5% per annum paid by

Vinod Khurana vide agreement to sell dated 18.10.1996. From the said pleadings, it was observed that plaint itself discloses fresh cause of action

to maintain the present suit.

7. Petitioner-defendant No. 1 filed an application under Order VII Rule II of the Code for the rejection of the plaint/Rejection of the plaint had

been sought on the ground that the plaint did not disclose any fresh cause of action to maintain the present suit and the relief claimed by the

plaintiff-respondents was available to them when the civil suit titled as ""Vinod Khurana v. Rajesh Graver and Ors."" was pending in the Court of

Shri Vijay Singh, Civil Judge, Gurgaon and the same was got dismissed as withdrawn without seeking liberty to institute a fresh suit. The further

ground is that the plaintiff-respondents intentionally relinquished and omitted to sue in respect of the relief prayed for in the present suit and the

same is barred under Order 2, Rule 2 of the Code and that the relief claimed by the plaintiff-respondents is also barred by period of limitation. It

was requested that the plaint be rejected under Order 7, Rule 11 of the Code.

8. The defendant-petitioner in view of the provisions contained in Order 7, Rule 11 of the Code has prayed that the plaint in the present suit should

be rejected.

9. I have heard learned Counsel for the parties and perused the record. Order 7, Rule 11 of the Code reads thus:

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 under valued, and the plaintiff, on being required by the Court to so 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 written 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-papers shall not be extended unless

the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause an exceptional nature from correcting the valuation

or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and the refusal to extend such time would cause

grave injustice to the plaintiff.

10. The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise

this power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it

should be so done in exceptional-circumstances. The truthfulness of narration of facts in the plaint or the written statement are not to be judged at

the stage of rejection of plaint. That is a matter of evidence which the Court shall go into at the trial of the case. The weakness or the strength of the

case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit.

11. The trial Court in the instant case held that the plaint discloses fresh cause of action and that the plaintiffs-respondents have a legal right to sue

the defendants or earnest money in view of alleged breach of contract by the defendant-petitioner by not fulfilling the statutory obligation and the

plaintiff-respondents are not precluded from instituting the suit and seeking relief as claimed herein. The objection that the suit was barred under

Order 2, Rule 2 of the Code has been rejected by the learned trial Court on two counts, firstly that in the plaint there are neither pleadings to this

effect nor any issue was framed nor any opportunity was given to the parties to lead evidence and secondly, that both the suits are based on a

different cause of action. The plea of suit being barred by limitation has been rejected on the ground that it is a matter of evidence and shall be

decided at appropriate stage.

12. In view of the above, there is found no error of jurisdiction or any illegality or infirmity in the order passed by the trial Court in rejecting the

application filed by the petitioner-defendant under Order 7, Rule 11 of the Code which would call for any interference in the exercise of revisional

jurisdiction by this Court.

13. Thus, there is no merit in this revision petition and the same is hereby dismissed.