



120

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

CR-3513-2022

Date of Decision: 14.05.2025

JOGA SINGH

... PETITIONER

VS.

RANJEET KAUR AND OTHERS

.. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. Sanjay Jain, Advocate,
for the petitioner.

Mr. Sanjiv Kumar Aggarwal, Advocate,
Mr. Tejas Bansal, Advocate,
Mr. Ojas Bansal, Advocate and
Mr. Nissim Aggarwal, Advocate
for the respondents.

SUVIR SEHGAL, J.

1. Aggrieved of order dated 06.07.2022 (Annexure P-1) passed by learned Civil Judge (Senior Division), Ambala, whereby, an application under Order 7 Rule 11 CPC has been dismissed, petitioner/defendant No.2 has approached this Court by way of instant petition.

2. Mr. Sanjay Jain, counsel for the petitioner submits that contesting respondents No. 1 to 3/plaintiffs had filed a suit for mandatory injunction, directing the defendants to pay compensation on account of murder of a relative, Sh. Saroop Singh. He states that upon being served, the defendants filed an application (Annexure P-3) under Order 7 Rule 11 CPC for rejection of the plaint as it was barred by law. He submits that after contest, the application has been erroneously declined by the trial Court vide order impugned herein. By making a reference to Section 41 (h) of Specific Relief Act, 1963, he urges that the plaintiffs have an equally

efficacious remedy of filing a suit for damages and suit for mandatory injunction is barred by law. Relying upon *State of Haryana Vs. Dr. Prem Singh Mann, 1996 (3) PLR 799*, he has urged that trial Court has failed to appreciate the arguments raised by the defendants.

3. Per contra, counsel for the plaintiffs has argued that the ground as urged by the counsel were never taken by the defendants before the trial Court. He has made a reference to the application as well as impugned order.

4. I have heard counsel for the parties and considered their respective submissions.

5. Application (Annexure P-3) filed by the defendants under Order 7 Rule 11 CPC, is being reproduced herein for the sake of convenience.

“1. That the plaintiffs/respondents have filed the above noted Suit which is pending before this Hon'ble Court and is fixed for today.

2. That as per the averments of the Plaint the plaintiffs/respondents have sought the compensation on account of alleged murder of Saroop Singh son of Sh. Dev Singh upon which an FIR No. 454 dated 11.12.2018 under Section 307/341/34 IPC was registered.

3. That admittedly the trial is pending before the Competent Court of Jurisdiction as such the present Suit is not only premature but at this stage the plaintiffs have got no cause of action to file and maintain the present Suit against the applicants/defendants.

4. That the applicants/defendants are totally innocent in the above mentioned FIR and will prove their innocence in the Trial as such the present Suit is liable to be dismissed for want of cause of action.”

6. A perusal of the above reproduced application shows that the ground taken for rejection of the plaint is that the plaintiffs do not have any cause of action to file this suit and the suit is not maintainable against the defendants. There is no averment to the effect that the suit is barred by law.

7. Be that as it may, since the ground being raised by the counsel for the petitioner before this Court does not arise from the averment of the application nor has it been raised before the trial Court, petitioner cannot be permitted to take it up in the revision petition. This Court does not find any infirmity or illegality in the order passed by the trial Court.

8. Revision petition being devoid of merit and is dismissed with no order as to costs.

14.05.2025

smriti

(SUVIR SEHGAL)

JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No