

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****131****CR-96-2025 (O&M)****Date of decision: 13.01.2025****Darshan Singh****...Petitioner(s)****Vs.****M/s Shri Hanuman Metal Industries & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sandeep Kumar, Advocate for
Mr. G.C. Shahpuri, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the defendant seeking setting aside of the order dated 05.11.2024 (Annexure P4) passed by the learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri whereby the application filed by the petitioner under Order 7 Rule 11 CPC has been dismissed.

2. Learned counsel for the petitioner submits that the plaintiffs/respondents No.1 to 8 herein have filed a suit dated 12.07.2019 (Annexure P1) for mandatory injunction and also sought relief of possession of the suit property. The petitioner sought rejection of the said suit of the plaintiff by way of application dated 13.11.2019 (Annexure P2) under Order 7 Rule 11 read with Section 151 CPC. The said rejection was sought primarily on three grounds: a) that the respondents have not affixed the proper Court fee of suit property; b) that the partnership firm of the petitioner is unregistered and is hit by Section 69 of the Partnership



Act; and c) that the defendant is in possession of the suit properties since the date of purchase in November 2005. However, the suit has been filed in July 2019 after more than 14 years which is barred by limitation. The learned counsel for the petitioner submits that the plaintiffs/respondents have sought relief of possession of immovable urban property but have neither valued the same nor paid the Court fee as required. It is submitted that the plaintiffs were required to pay Court fee on the market value not less than the Collector rate. It is submitted that accordingly the application filed by the petitioner under Order 7 Rule 11 CPC could not have been dismissed.

3. No other argument is raised on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. It is an irrevocably established position in law that at the stage of deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. The Hon'ble Supreme Court in numerous judgments including "**Eldeco Housing and Industries Ltd. Vs. Ashok Vidyarthi & 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 7 Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order 7 Rule 11 CPC. In "**Kamala & Others Vs. K.T. Eshwara Sa & Others**" 2008 (12) SCC 661, it is held that in an application under Order



7 Rule 11 CPC, no evidence can be look into; issue on merits of the matter would not be within the realm of the Court at that stage; and the Court would not decide any evidence or disputed question of fact or law.

6. In the present case, admittedly, the petitioner has sought rejection of the plaint on the above said three grounds that i.e. a) respondents have not affixed the proper Court fee of suit property; b) partnership firm of the petitioner is unregistered and is hit by Section 69 of the Partnership Act; and c) the suit is barred by limitation. Needless to say, the said assertions would require leading of evidence which cannot be permitted while adjudicating upon an application under Order 7 Rule 11 CPC.

7. At this stage, learned counsel for the petitioner has submitted that he withdraws his pleadings qua the other grounds and that he presses the application under Order 7 Rule 11 CPC only on the ground of Court fee and not on the other two grounds of Section 69 of the Partnership Act and limitation. However, the same cannot be permitted at this belated stage and ought to have been made, if at all, before the learned trial Court in the first instance.

8. Moreover, even the plea of the petitioner in respect of Court fee is not tenable. Relevant observations of the learned trial Court in this regard are contained in Para 7 of the impugned order, which reads as follows:-

“7. So far as the plea that the plaintiffs have not affixed advalorem Court fee as they are seeking possession of the



immovable property is concerned, it is important to note that the plaintiffs have filed the present suit seeking a decree for mandatory injunction on the averments that the defendants were given license to occupy the premises purchased by the plaintiffs from defendants and by giving notice, plaintiffs have terminated the license despite which defendants had not hand over vacant possession to the plaintiffs, which constrained them to file the present suit. Going by averments taken by plaintiffs in their plaint, it is apparent that the plaintiffs have filed suit for mandatory injunction and not suit for possession, as such and hence, Court fee affixed by plaintiffs cannot be said to be insufficient.”

9. In view of the above, the present petition is **dismissed**.
10. Pending application(s) if any also stand(s) disposed of.

13.01.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No