



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

119

CR-6016-2025

Date of Decision: 02.09.2025

Vinay Garg

...Petitioner

VERSUS

Ashwani Kumar and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

Present: Mr. Rohit Mittal, Advocate, for the petitioner.

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**AMARINDER SINGH GREWAL, J. (ORAL)**

1. The present revision petition has been filed under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908, assailing the order dated 21.07.2025 (Annexure P-3) passed by the learned ACJ (SD), Narnaul, in Civil Suit No.741 of 2025 titled "*Ashwani Kumar v. Vinay Garg and others*", whereby the application under Order VII Rule 11 CPC, filed by the petitioner/defendant No.1, was dismissed.

2. Brief facts of the case are that respondents No.1 and 2/plaintiffs instituted a suit under Section 91 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC), seeking to restrain the defendants from creating public nuisance by raising unauthorized construction adjacent to a public pathway, allegedly in violation of building regulations and municipal by-laws. During the pendency of the suit, defendants/respondents No.1 and 2 filed an application under Order VII Rule 11 CPC, *inter alia*, contending that the suit had been improperly instituted under Section 91 CPC, which is attracted only in cases of public nuisance or other wrongful acts affecting the public at large. The learned trial Court, after hearing both the parties and upon



consideration of the averments made in the plaint, dismissed the said application under Order VII Rule 11 CPC, holding the same to be devoid of merits.

3. Learned counsel for the petitioner/defendant No.1 contends that the present case neither pertains to any public property nor involves infringement of any public right. It is further submitted that the answering defendants are not raising any construction over public land. Moreover, none of the respondents/plaintiffs are residents of the locality where the suit property is situated, nor is their residence or place of birth within the area allegedly affected. In such circumstances, the respondents/plaintiffs were required to obtain the mandatory leave or permission of the learned Court to institute a representative suit under Section 91 CPC, which they have failed to do. Ultimately, he prays for setting aside the impugned order dated 21.07.2025.

4. I have heard learned counsel for the petitioner and have gone through the material placed on record.

5. Respondent No.1 and another plaintiff have instituted a simple suit for permanent injunction before the learned ASJ (SD), Narnaul, against the present petitioner-defendant and others to the effect that the petitioner-defendant, by mutual agreements, should not carry out any construction work in gross violation of the provisions of the Haryana Building Code on the property as detailed in the headnote. Notice of the above-mentioned Civil Suit was given to the defendants, whereafter the petitioner-defendant appeared and it was then, an application under Order VII Rule 11 CPC was filed before the learned ACJ (SD), Narnaul, by the petitioner-defendant. The learned ASJ (SD), Narnaul, in its order dated 21.07.2025, which is under challenge herein, in



para-4 has categorically held that the cause of action in the present suit is distinct and relates specifically to the unauthorized construction near the public path. Thus, it was held by the learned ACJ (SD), Narnaul, that the suit discloses a valid cause of action and is maintainable in law. This Court feels that only the well-recognised grounds envisaged under Order VII Rule 11 CPC, i.e. failure to disclose a cause of action or the suit being barred by law, would justify the rejection of the plaint in its entirety. Further this Court also feels that an order rejecting the plaint under Order VII Rule 11 CPC is legally treated as a decree. The order passed by the Hon'ble Supreme Court India in case **P. Kumarakurubaran Vs. P. Narayanan and others, 2025 SCC Online SC 975**, has categorically held that where the plaint discloses a cause of action, the same cannot be shut out at the threshold. Moreover, the learned ACJ (Sr. Divn.), Narnaul, has also taken a view that while deciding the application under Order VII Rule 11 CPC, the averments made in the plaint alone are to be taken into consideration and even on this point, the learned ACJ (SD), Narnaul, had relied upon the authority of the Hon'ble Supreme Court of India in case of **Kamala and Ors. Vs. K.T. Eshwara Sa and Ors., AIR 2008 SC 3174**.

6. In view of the discussion made hereinabove, this Court does not find any perversity or illegality in the order dated 21.07.2025 passed by the learned Additional Civil Judge (Sr. Divn.), Narnaul. Consequently, the present revision petition stands dismissed.

(AMARINDER SINGH GREWAL)  
JUDGE

02.09.2025

*anil*

Whether speaking/ reasoned:  
Whether Reportable:

Yes/No  
Yes/No