

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****CR-3035-2026 (O&M)****Date of decision: 08.04.2026****Abhishek Goyal****...Petitioner(s)****Vs.****Lalit Bansal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Harsh Goyal, Advocate
for the petitioner.

*********NIDHI GUPTA, J.**

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by defendant No.2 seeking setting aside of the order dated 02.01.2026 (Annexure P-1) passed by learned Civil Judge (Junior Division), Malerkotla; whereby application filed by the petitioner under Order VII Rule 11 CPC for rejection of the plaint, has been dismissed.

2. It is *inter alia* submitted by learned counsel for the petitioner that learned Trial Court was in patent error in dismissing the application of the petitioner as it failed to appreciate that during his evidence, plaintiff himself has duly admitted that similar matter had been previously adjudicated upon by the learned Additional District Judge, Sangrur. Plaintiff in his cross-examination has also admitted the pendency of the appeals. It was, therefore, clear that the suit is barred by principle of res judicata. However, learned Trial Court has wrongly



held that res judicata is mixed question of law and fact. It is submitted that from the evidence led by the plaintiff himself, it was also established on record that the plaintiff had deliberately suppressed the material facts.

3. Learned counsel for the petitioner further submits that the impugned order is perverse inasmuch as the Learned Trial Court failed to consider that the plaintiff has already admitted in prior proceedings, including judicial and arbitral proceedings, that he is the sole proprietor/continuing partner, and therefore, the present suit seeking contrary declarations is barred by the principle of estoppel and is an abuse of the process of law.

4. It is further submitted that the Learned Trial Court has failed to appreciate that the present suit is nothing but a collateral attack on the judgment dated 07.12.2018 passed by the Learned Additional District Judge, Sangrur, which has already determined the rights and liabilities of the parties, and the same is under challenge before this Hon'ble Court, and thus the Civil Court could not have entertained a parallel proceeding on the same subject matter.

5. Learned counsel for the petitioner further submits that the finding of the Learned Trial Court that the application was filed at a belated stage and intended to delay proceedings is wholly erroneous and irrelevant for deciding an application under Order VII Rule 11 CPC, as such application can be filed at any stage and must be decided strictly in accordance with law.



6. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order dated 02.01.2026 (Annexure P-1) be set aside.

7. No other argument is raised by learned counsel for the petitioner. I have heard Id. counsel and perused the file. I find no merit in the submissions advanced on behalf of Id. counsel for the petitioner.

8. Brief facts of the case in chronological order are as follows: -

16.02.2019: Plaintiff/respondent No.1 had filed Civil Suit dated 16.02.2019 (Annexure P-8) for declaration.

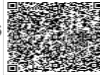
22.07.2019: Petitioner had filed written statement dated 22.07.2019 (Annexure P-9).

27.11.2024: Issues were framed on 27.11.2024; whereby issue of maintainability has been specifically formulated.

06.08.2025: It is at the stage of cross-examination of the plaintiff that the petitioner moved present application dated 06.08.2025 (Annexure P-10) for rejection of the plaint on the ground that the matter in issue already stands decided vide arbitral Award dated 07.12.2018 (Annexure P-6).

Accordingly in the application (Annexure P-10), the petitioner has sought rejection of the plaint on the ground of res judicata and material concealment of facts.

11.08.2025: On 11.08.2025, respondent No.1/plaintiff had filed reply (Annexure P-11) to the aforesaid application of the petitioner.



02.01.2026: Vide impugned order dated 02.01.2026 (Annexure P-1), application of the petitioner under Order VII Rule 11 has been dismissed.

9. First and foremost, the contention of the petitioner that it was only during evidence of the plaintiff that it was discovered that the matter in issue already stands settled by way of Award dated 07.12.2018 (Annexure P-6), is misleading as the said Arbitration Case No. 34 dated 24.08.2015 is titled as **Abhishek Goyal son of Achru Ram vs. PUNGRAIN and others**. In the said arbitration case, plaintiff is respondent No.5. Thus, no explanation has been given by the petitioner for the extraordinary delay in filing the instant application at the fag end of the evidence of the plaintiff. It would therefore appear that observation of the learned Trial Court that the present application has been moved only with a view to delay the trial, is correct.

10. Moreover, it is established position in law that in an application under Order VII Rule 11 CPC, only the averments made in the plaint can be seen. The Hon'ble Supreme Court in numerous judgments including ***Eldeco Housing and Industries Ltd. vs. Ashok Vidyarthi and 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 VII Rule 11 CPC; and that only the averments made in the plaint would be relevant for invoking Order VII Rule CPC. Again, in ***Kamala and others vs. K.T. Eshwara Sa & Others, (2008) 12 SCC 661, Law Finder Doc Id # 143844***, the Hon'ble Supreme Court opined that for invoking Order VII Rule 11



CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. Reference may also be made to three-Judge Bench judgment of Hon'ble Supreme Court in "**Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Others**" **Law Finder Doc ID # 1865777**, wherein it has been held that "*...In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken.*" It has been categorically held that the grounds taken by the defendant as defence or any evidence subsequently brought on record, cannot be taken into account while rejecting a plaint under Order 7 Rule 11 CPC.

11. In view of the above, I find no ground is made out to interfere in the impugned order dated 02.01.2026 (Annexure P-1). The present Civil Revision Petition is accordingly **dismissed**.

12. Pending application(s), if any, also stand(s) disposed of.

08.04.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE