

- In insurance, the **insurer must show that the case falls within the exclusionary clause** of the policy.
- If there is **ambiguity**, the **contract** of insurance must be interpreted in favor of **the insured**.
- The insurer failed to prove that the incident and the resulting damage to the insured property was caused by the malicious act of the insured.
- Whenever an **EXCLUSIONARY CLAUSE** is included in a policy, it is the responsibility of the insurer to prove that the case falls within the scope of the clause.
- The surveyor report stated that the loss occurred due to the insured peril and the claim was admissible.
- **The insurer must provide cogent and satisfactory reasons or grounds for not accepting the SURVEYOR'S REPORT.**
- **(2023-3)211 PLR 068** (SC)
- [Full Judgment with detailed headnotes for Online Subscribers \(opens automatically\).](#)
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(2023-3)211 PLR 066
PUNJAB AND HARYANA HIGH COURT
Before:- Mr. Justice Rajbir Sehrawat.
RAJINDERPAL SINGH – Petitioner

Versus

THAKUR DAWARA KAPOORGARH and others – Respondents.
CR No. 200 of 2023

Civil Procedure Code, 1908 (V of 1908) Order 7, Rule 11 - Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 (4 of 1998) - Trial Court has already framed the issues, including the issue of maintainability of the suit in the present form - Evidence of the plaintiff is already over and part of the evidence of the defendants is also completed - Therefore, at this stage, the application under Order 7, Rule 11 of the [CPC](#) could not have even been entertained by the Court below - The only course of action, at this stage, would be to seek a final adjudication on the issues.

[Para 6]

P.S. Punia, for the Petitioner.

Rajbir Sehrawat, J. (Oral) -(12th January, 2023) - This is a petition filed under Article 227 of the Constitution of India for setting aside the order dated 01.12.2022 (Annexure P-1) passed by the Civil Judge (Junior Division), Amloh, District Fatehgarh Sahib, whereby application for the petitioner under Order 7, Rule 11 read with section 151 of the CPC has been dismissed.

2. It is submitted by the learned counsel for the petitioner that the respondents have filed a civil suit for declaration and possession qua the land in question claiming the same to be belonging to the religious body. Therefore, the civil suit is not maintainable, as per the provisions of the Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 (for short, 'the Act'). The petitioner has filed an application under Order 7, Rule 11 of the CPC for dismissal of the suit on the ground of lack of jurisdiction of the Civil Court. However, that has wrongly been declined by the Court below by saying that the provisions of the Act are not attracted in the present case. Learned counsel has further submitted that the Trial Court, while rejecting the application, has even recorded a finding qua the applicability of the Act, denying the petitioner even the opportunity to raise the issue of

jurisdiction at the time of final decision of the suit. Hence, the impugned order deserves to be set aside and the plaint of the respondents deserves to be rejected.

3. Notice of motion.

4. Mr. Mohd. Yousaf, Advocate, accepts notice on behalf of respondents No.1 and 2.

5. It is submitted by the learned counsel for respondents No.1 and 2 that the application filed by the petitioner was not even maintainable. The clause qua exclusion of the jurisdiction is relatable only to the proceedings qua the eviction and rent recovery from a person, who is, statedly, a tenant on the land. It is further submitted that, in any case, the Trial Court had already framed the issues in the matter. Not only that even the evidence of the plaintiff is complete and the defendant-the present petitioner; has also led part of the evidence. Since, the trial of the suit is at the fag end, therefore, the plaint cannot be rejected at this stage under Order 7, Rule 11 of the CPC.

6. Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the respondents. It is not disputed even by the learned counsel for the petitioner that the Trial Court has already framed the issues, including the issue of maintainability of the suit in the present form. Not only that; even this fact is not disputed that the evidence of the plaintiff is already over and part of the evidence of the defendants is also completed. Therefore, at this stage, the application under Order 7, Rule 11 of the CPC could not have even been entertained by the Court below. The only course of action, at this stage, would be to seek a final adjudication on the issues framed by the Trial Court, which, undisputedly, involves an issue regarding the maintainability of the suit; as well. Hence, the application filed by the petitioner under Order 7, Rule 11 of the CPC was liable to be dismissed and the same has rightly been dismissed by the Trial Court. However, even the Trial Court should not have expressed any opinion qua applicability or non-applicability of the Act at this stage when the suit is at the stage of final decision.

7. In view of the above, finding no merit in the present petition, the same is dismissed. However, nothing observed by the Trial Court in the order impugned in the present petition shall affect the merits of the case at the time of final decision.

R.M.S. – Petition dismissed.