

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CR 45/2023

MST. RUBEENA SHEHZADI

...Petitioner(s)/appellant(s)

Through: Mr. Ishfaq Muzamil Nahvi, Advocate

Vs.

MST. SHAHZADA AND ORS

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

18.12.2023

1. The instant revision petition under Section 115 of Code of Civil Procedure (CPC) has been filed by the petitioner against order dated 16.09.2023 passed by the Court of 1st Civil Subordinate Judge (Municipal Magistrate) in case titled as "*Shahzada and Others vs. Rubeena Shehzadi and Others*".

2. Facts emerging from the record would reveal that the respondents herein as plaintiffs filed a suit for permanent injunction qua a parcel of land, besides, against the petitioner herein being defendant 1 in the suit also against the official respondents herein seeking therein a decree for restraining the defendant 1 - petitioner herein from raising any kind of illegal and unauthorized construction of any building thereon the said land without permission from the municipal authorities, besides, seeking a decree for mandatory injunction against the official respondents for directing them to dismantle and demolish any such construction being raised by the defendant-petitioner herein.

3. The defendant 1 - petitioner herein after entering appearance, in response to the summon issued in the suit supra, before the trial court filed an application under Order VII Rule 11, CPC read with Section 151 seeking therein rejection/dismissal of the plaint, though, maintained on multiple grounds, yet, fundamentally on the ground that the suit being vexatious and meritless is firstly barred by law and secondly that the plaintiffs-respondents herein have no cause of action/lack cause of action over the suit property as the defendant 1 - petitioner herein is the sole owner and possessor of the same, which application came to be rejected by the court below in terms of the impugned order.

4. The impugned order is assailed in the instant petition primarily on the ground that the impugned order passed by the court below is illegal, unwarranted, unjustified and against the settled procedure of law having been passed while misunderstanding the law relating to the rejection of plaint as contained in Order VII Rule 11 (a), CPC.

Heard learned counsel for the petitioner and perused the record.

5. Before proceeding to address to the aforesaid grounds urged in the instant petition, it is significant to note here that, admittedly, the defendant 1 - petitioner herein while seeking consideration of the application filed before the trial court under Order VII Rule 11 (a) on the ground that the suit is barred by law, the said ground came to be given up and as such the trial court while considering the application, confined its consideration qua the ground that the plaintiffs have no cause of action against the defendant over the suit property.

6. It is beaten law that Order VII Rule 11, CPC gives various instances where under a plaint can be rejected. The first ground provided under Order

VII Rule 11, CPC for rejection of plaint being relevant herein is extracted and reproduced hereunder:-

“11. Rejection of plaint – The plaint shall be rejected in the following case:-

(a) where it does not disclose a cause of action.”

The issue qua application of Order VII Rule 11(a) is no more *res integra* and stands settled by the Apex Court in case titled as “*State of Orrisa vs. Klockner and Company & Ors*” reported in 1996 (8) SCC 377 wherein it has been held that there is a distinction between non-existence of cause of action and non-disclosure of cause of action and for determining whether the plaint is liable to be rejected under Clause (a) of Order VII Rule 11, averments of the plaint alone are material and relevant, however, on the other hand, for determining whether there is cause of action for institution of a suit, the question can only be determined on the basis of material (other than the plaint) on record and in that case Order VII Rule 11 (a) will have no application.

7. Having regard to the aforesaid distinction laid down by the Apex Court and reverting back to the case in hand, admittedly, the defendant 1 - petitioner herein has sought rejection of the plaint not on the ground that the plaint does not disclose cause of action, but on the ground that the plaintiffs – respondents herein have no cause of action to file the suit against the defendant-petitioner herein over the suit property. Though the trial court in the impugned order has not dismissed the application filed by the defendant-petitioner herein on the basis of aforesaid distinction provided by the Apex Court, yet, perusal of the application *ex-facie* would suggest that the said application filed by the defendant-petitioner herein before the trial court is patently misconceived and as such, the plaint of the plaintiffs-respondents

herein could not be rejected. The petition for the aforesaid reason, thus, is found to be meritless and is accordingly dismissed.

(Javed Iqbal Wani)
Judge

SRINAGAR
18.12.2023
Aamir

Whether the order is speaking Yes

Whether the order is reportable Yes

