



Serial No. 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 23 of 2024

Date of Decision: 07.11.2024

1.Smti. Bina Roy A. Sangma
W/o (L) Atul C. Marak,
R/o Najing Bazar, Tura,
West Garo Hills District, Meghalaya

2.Smti. Ambika A. Sangma
D/o (L) Atul C. Marak
R/o K.A. Road (Chest Clinic)
P.O. Chandmary, P.S. Tura,
West Garo Hills District, Meghalaya

:::Petitioners

-Vs-

Shri. Ismail Ch. Marak
S/o (L) Debingstone Ch. Sangma
R/o Kusimkolgre, P.O & P.S.
Williamnagar, East Garo Hills
District, Meghalaya

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.G. Momin, Adv.

For the Respondent(s) : Mr. P.R. Paske, Adv.



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|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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Oral:

1. The petitioner being aggrieved with the rejection of an application under Order 7 Rule 11 CPC, by the Courts below is before this Court by the instant Revision Application under Section 115 CPC read with Rule 6 of the Meghalaya High Court (Jurisdiction over District Council Courts) Order, 2014.

2. The case of the petitioner is that on a suit for recovery of money filed by the respondent as Plaintiff, the petitioner herein, on the ground that the said money suit was time barred, filed an application under Order 7 Rule 11, before the Court of the Assistant Judge, District Council Court, Tura. The same was rejected by order dated 15.05.2024, on the ground that the written statement was yet to be filed, and accordingly, while rejecting the application, the petitioner/defendant was given last chance to file a proper written statement.

3. Thereafter, the petitioner had preferred an appeal before the Court of the Judge, District & Sessions, District Council Court, GHADC, Tura, which also came to be rejected by order dated 07.08.2024, on the ground



that the appeal was premature, but however, with a direction to the petitioner/appellant file a written statement before the Trial Court.

4. Heard learned counsel for the parties. The issue in question is only with regard to whether the Courts below were right on insisting on the filing of the written statement, before an application under Order 7 Rule 11 can be entertained. This point in the considered view of this Court, is an issue which has been settled and therefore needs no exhaustive deliberation. To put it briefly, an application under Order 7 Rule 11 is for rejection of the Plaint on the grounds that has been given therein, which for the sake of convenience is reproduced herein below.

“Order 7 Rule 11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;
(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;



*(d) where the suit appears from the statement in the
plaint to be barred by any law;*

[(e) where it is not filed in duplicate;

*[(f) where the plaintiff fails to comply with the
provisions of Rule 9:]]*

*[Provided that the time fixed by the Court for the
correction of the valuation or supplying of the requisite
stamp-papers shall not be extended unless the Court,
for reasons to be recorded, is satisfied that the plaintiff
was prevented by any cause of an exceptional nature
from correcting the valuation or supplying the
requisite stamp-papers, as the case may be, within the
time fixed by the Court and that refusal to extend such
time would cause grave injustice to the plaintiff.]”*

5. The above noted provision concerns only a consideration of the averments made in the Plaint on the filing of an application under Order 7 Rule 11, and not the Written Statement. As such, an application under Order 7 Rule 11 can be filed before the filing of a written statement, and Courts are bound to dispose of the same first before proceeding with the trial. In this context the decision rendered by the Supreme Court in the case of **R.K.**



Roja vs. U.S. Rayudu & Anr. reported in (2016) 14 SCC 275, which is useful for the instant case has held in Para – 4-6, as follows:-

“4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr. (SCC p. 146, para 10)

“10. ... “The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rule 11 (a) to (f) CPC, the same has to be rejected.

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case,



in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (See Saleem Bhai v. State of Maharashtra). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from para 20 of Sopan Sukhdeo Sable case(SCC pp. 148-49)

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.

6. In Saleem Bhai case, this Court has also held that: (SCC p. 560, para 9)

“9. ... a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial court.”

However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot



be made as a ruse for retrieving the lost opportunity to file the written statement.”

6. Accordingly, on these facts and circumstances and by the application of settled law, the instant Revision Application is allowed, and the learned Trial Court is directed to take up the application filed under Order 7 Rule 11 for consideration.
7. As ordered above, the Revision Application is closed and disposed of.
8. No order as to costs.

Judge

Meghalaya
07.11.2024
“D.Thabab-PS”