

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

CM(M) 277/2025 CM(4464/2025)

UNION TERRITORY OF J AND K AND ORS.

..... Petitioner (s)

Through: Mr. Jahangir Dar, GA.

V/s

**MAGPIE HYDEL CONSTRUCTION OPERATION INDUSTRIES
PRIVATE LIMITED**

..... Respondent(s)

Through: Mr. Z A Shah, Sr. Adv with
Mr. Hanan, Advocate.
Mr. S N Ratanpuri, Adv with
Ms. Insha, Advocate.

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER(ORAL)

05.12.2025

1. The petitioners through the medium of present petition have challenged the proceedings initiated by learned Principal District Judge, Srinagar, on the basis of a suit filed by the respondent against the petitioners, wherein it has sought a declaration that it be held entitled to exemption from water usage charges fixed in terms of tariff issued vide order No. 89/JKSWRRA of 2014 dated 22-12-2014 read with Hydel Power Policy of 2011 read with Hydel Power Policy of 2003.

Respondent/plaintiff has also challenged tariff fixed in respect of water usage charges vide order dated 22-12-2022 (supra) as being arbitrary, irrational and contrary to Hydel Policy of J&K. Certain other related reliefs have been also sought by the plaintiffs in the suit.

2. The ground urged by the petitioners for challenging the proceedings before the learned trial court is that the suit filed by the respondent/plaintiff is not cognizable by a Civil Court as the same is barred under Section 177 of J&K Water Resources (Regulatory and Management Act) 2010.
3. The senior counsel appearing for the respondent/plaintiff has, however, refuted the contention of the petitioners/defendants that suit is barred by provisions contained in Section 177 of J&K Water Resources (Regulatory and Management Act) 2010.
- 4. Heard learned counsel for the parties and perused record of the case.**
5. It appears that the petitioners/defendants after putting in their appearance before the learned trial court stopped appearing and accordingly vide order dated 22-06-2020, passed by the

trial court ex-parte proceedings were initiated against them. They filed an application for setting aside of the ex-parte proceedings. However, their application came to be dismissed by the learned trial court on 23-02-2024. It is at this stage that the petitioners have approached this Court by way of present petition challenging the proceedings pending before the learned trial court on the ground that the trial court does not have jurisdiction to entertain the suit.

6. Order 7 Rule 11 CPC, provides the procedure for rejection of a plaint and it also delineates the grounds on which plaint can be rejected. One of the grounds available to a defendant for seeking rejection of the plaint is where the suit appears from the statement in the plaint to be barred by any law. The petitioners/defendants claim that the suit is barred by the provisions contained in Section 177 of J&K Water Resources (Regulatory and Management Act) 2010. If that is so, the defendants/petitioners are always at liberty to file a application under Order 7 Rule 11 of CPC before the learned trial court notwithstanding the fact that they have been set ex-parte in the main suit.

7. Needles to mention that at the time of considering an application under Order 7 Rule 11 of CPC, a civil court has only to consider the assertions made in the plaint and documents annexed thereto and there is no need to go into assertions made in the written statement that may be filed by the defendants. Therefore, even in the absence of the written statement of the petitioners/defendants it will be open to the learned trial court to deal with the application under Order 7 Rule 11 of CPC that may be filed by the petitioners/plaintiffs.
8. In view of the fact that petitioners have an efficacious and alternative remedy available to them, this Court would not entertain the present petition under Article 227 of the Constitution.
9. Accordingly, while refusing to entertain the present petition, the petition is *disposed of* with leave and liberty to the petitioners/defendants to approach the trial court by way of an application under Order 7 Rule 11 of CPC. If and when such an application shall be filed by the petitioners/defendants before the learned trial court the same shall be decided most expeditiously in accordance with law

after hearing the parties preferably within a period of one month from the date an application is made by the petitioners/defendants.

(Sanjay Dhar)
Judge

SRINAGAR
05.12.2025
Sarvar

