

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 616 of 2014**

- Seetaram Rajak S/o Lt Raghuwar Prasad Rajak Aged About 35 Years
Agriculturist, R/o Village Mangla, Ps Civil Lines, Dist Bilaspur, Civil &
Revenue Distt Bilaspur, Cg

---- **Petitioner****Versus**

1. Praveen Kumar Mishra S/o Shrawan Kumar Mishra Aged About 47 Years
Agriculturist, R/o Village Gondpara, Bilaspur, Ps City Kotwali, Distt Bilaspur,
Civil & Revenue Dist Bilaspur, Cg
2. Laxmi Rajak S/o Lt Raghuwar Prasad Rajak Aged About 32 Years
Agriculturist R/o Village Mangla Ps Civil Lines, Dist Bilaspur, Civil &
Revenue Dist Bilaspur, CG

---- **Respondent**

For Petitioner	: Mr. Ratnesh Kumar Agrawal, Advocate
For Respondent No. 1	: Mr. Keshav Dewangan, Advocate
For Respondent No.2	: None though represented.

Order on Board**05/11/2015**

1. Heard finally at motion stage with consent of both the parties.
2. Facts of the case in brief are that the petitioner had filed an application I.A. No. 3 under Order 7 Rule 11 of Civil Procedure Code (in brevity 'C.P.C.') for rejection of the plaint as the plaintiff had not filed court fee as required under the law and not suitably valued the plaint. The prayer was rejected by the court below vide impugned order dated 30-7-2014 along with orders passed on other interim applications also. The petitioner has invoked the jurisdiction under Article 227 of the Constitution of India challenging propriety and legality of the order passed by the court below to the extent of the order passed in the application under Order 7 Rule 11 of C.P.C. only.
3. Learned counsel for the petitioner submitted that learned court below was first required to ask the plaintiff to deposit the court fee and if no court fee is deposited then the suit has to be dismissed as barred by time. He further submits that the order is bad in law and perverse. The petitioner has a good case. Said portion of the order passed by the court below be set aside and the plaint be rejected as it is barred by time.
4. On the other hand, learned counsel for the respondent No. 1 submitted that the court may frame any issue regarding valuation, insufficient court fee on

the basis of the pleading of the parties and the same may be disposed of either as preliminary issue or otherwise by the trial court itself as the case may be.

5. Learned counsel for the petitioner submitted that he has filed written statement before the court below in which also he has raised ground regarding valuation of the suit and also for insufficient court fee affixed and also the suit is barred by law. Till today the court has not formulated issues and the matter is pending.
6. On due consideration, looking to the application made under Order 7 Rule 11, C.P.C. and the order passed by the court below for dismissal of the same, also in view of the fact that the petitioner /defendant filed their written statement and pleaded facts regarding insufficient valuation and the suit to be barred by limitation, it would be proper to formulate issues on the pleading made by the parties including issues for insufficiency of court fee and whether the suit is barred by law as it is not properly valued, after due opportunity to the parties. The court below may dispose of the issues either as preliminary issue or other wise after granting opportunity to both the parties to adduce evidence.
7. Needless to say, while adjudication of the preliminary issues, the order passed by the court below under Order 7 Rule 11, C.P.C. would not come in the way as the issues have to be decided afresh on the material available.
8. Consequently, instant writ petition is disposed of. The court below is directed to frame issues regarding court fee, suit barred by law, if any pleading is made by the petitioner in his written statement and after formulating those issues including all other issues, issues which is purely a question of law may be disposed of as a preliminary issue or otherwise as per provisions of law. It is also made clear that any appreciation under Order 7 Rule 11, C.P.C. would not come in the way of such adjudication of preliminary issue.
9. The petition is accordingly disposed of.
10. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge