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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 192/2016

RAJE RAM

..... Petitioner

Through

Mr.Apurb Lal and Mr,Daleep Singh,
Advocates

versus

JAI SINGH & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.12.2016

CM No.44001/2016 (exemption)

Exemption allowed, subject to all just exceptions.

C.R.P. 192/2016 & CM No.44000/2016

1. By the present Revision Petition filed under section 115 of the CPC the petitioner seeks to impugn the order dated 16.8.2016 by which his application under Order 7 Rule 11 CPC was dismissed.

2. The controversy centres around a caste certificate issued to respondent No.1. It appears that the respondent No.1 states that he belongs to 'Agri Caste' (Scheduled Caste). The petitioner is stated to have filed a complaint before the concerned authorities stating that the respondent No.1 is wrongly projecting his caste. The Sub Divisional Magistrate (SDM) by order dated 10.9.2013 cancelled the certificate in favour of respondent No.1. The respondent No.1 challenged the said order of the SDM dated 10.9.2013 by filing a writ petition before this court. The said Writ Petition No.7178/2013 was disposed of on 30.11.2015. The writ court came to the

conclusion that the remedy of respondent No.1 to challenge the order of SDM would lie before a Civil Court as it involves appreciation of evidence and also appreciation of conclusions reached by the concerned SDM. The petition was disposed of with liberty to respondent No.1 to approach the civil court for challenging the order of the SDM as well as for declaration of belonging to the Agria caste.

3. It is noteworthy that the petitioner was a party to the writ petition. He has not challenged the said order of the writ petition before the appellate court and has accepted the same. In compliance of the order of the writ court dated 30.11.2015 respondent No.1 has now filed the present suit for declaration and mandatory injunction where he seeks a decree of declaration that he pertains to Agria community and a declaration quashing the order of the SDM dated 10.9.2013. Other connected reliefs are also sought.

4. The petitioner has now filed the present application under Order 7 Rule 11 CPC for dismissal of the suit trying to argue that the civil court has no jurisdiction in this matter and that the remedy if any of the respondent No.1 was to file an appropriate writ petition challenging the order of the SDM. To support his argument, he has relied upon judgments of the Supreme Court in *Kumari Madhuri Patil and Another vs. Addl. Commissioner Tribal Development and Others*, (1994) 6 SCC 241 and the case of *Daya Ram vs. Sudhir Batham and Others*, (2012) 1 SCC 333 to contend that no suit or proceedings would lie challenging the order of the Caste Scrutiny Committees regarding the caste of an individual.

5. The trial court by the impugned order noted that if the petitioner had any grievance against the order of the writ court dated 30.11.2015 it ought to have filed an LPA against that order. In view of the liberty granted by the

writ court for challenging the order of the SDM the trial court dismissed the application under Order 7 Rule 11 CPC.

6. In my opinion, there is no infirmity in the order of the trial court. The writ court has by its judgment dated 30.11.2015 come to a conclusion that determination of the caste is a question of fact and such factual findings cannot be determined in writ jurisdiction. Hence, the said writ court had granted liberty to respondent No.1 to approach the civil court challenging the order of SDM and for declaration of belonging to Agria Caste. A direction was also passed that the petitioner would also be impleaded as a defendant in all the suits. What the petitioner seeks is to leave the respondent No.1 remediless. Before the writ court he does not raise the plea that the writ court is the appropriate forum. He also does not challenge the order dated 30.11.2015 of the writ court permitting filing of the present suit. Now he has an objection that the civil court does not have jurisdiction. Obviously respondent No.1 cannot be left without any remedy as is sought to be urged by the petitioner.

7. The Supreme Court in *Kumari Madhuri Patil and Another vs. Addl. Commissioner Tribal Development and Others (Supra)* was dealing with a situation regarding admission to educational courses. The Supreme Court noted that the admissions gained to educational institutions obtained on the basis of false social status certificate had the effect of depriving genuine SC/ST or OBC candidates the benefit conferred on them. Hence, the court passed a detailed direction to the States concerned to endeavour to give effect to the directions. One of the directions was a constitution of a committee of three officers. In that context the Supreme Court had held that the order of the scrutiny Committee shall be final and conclusive and only

subject to proceedings under Article 226 of the Constitution of India. In the present case no Scrutiny Committee appears to have been constituted. The order has been passed by the SDM, Narela who is a government functionary. The said judgment would not have any application to the facts of the present case.

8. Present petition is without merits and is dismissed. All pending applications, if any, also stand disposed of accordingly.

9. By the impugned order the trial court had struck off the right of the petitioner to file his written statement. In the interest of justice the petitioner is granted 15 days' time from today to place on record the written statement.

JAYANT NATH, J

DECEMBER 07, 2016

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