

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Writ Petition (227) No.521 of 2017**

Tushar Kanti Ghosh, S/o Shri Sunil Kumar Ghosh, aged about 58 years,  
R/o Indira Colony, under the Tarbahar, Pani Tanki, Tarbahar, Bilaspur,  
Tahsil and District Bilaspur (CG).

**---- Petitioner**

**Versus**

Smt. Pushpa Dey (now dead) through legal heirs

1. Utsav Dey.

2. Utpal Dey,

- Both are sons of late Shri A.K.Dey, aged about not known, R/o  
Juni Line, N.N. Dey Road, Bilaspur, Tahsil and District Bilaspur  
(CG).

**• ---Respondents**

For Petitioner : Mr. I. Lakra, Advocate

**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Order On Board**

**01/08/2017**

(1) The application under Section 11 of CPC filed by the petitioner/defendant, which has been rejected by the Rent Controller Authority by its impugned order dated 10.04.2017 against which this writ petition under Article 227 of the Constitution of India has been filed by the petitioner herein.

(2) Learned counsel appearing for the petitioner/defendant would submit that the Rent Controller Authority has committed jurisdictional error in rejecting the application under Section 11 of CPC.

(3) I have heard learned counsel for the petitioner/defendant and perused the impugned order.

(4) It is well settled principle of law that the plea of res judicata is a mixed question of law and fact, requires not only examination of plaint but also other evidence, as such it cannot be a ground to reject plaint **(See AIR 2015 SC 3357 in the matter of Vaish Aggarwal Panchayat Vs. Inder Kumar & Others).**

(5) After hearing learned counsel for the parties and in view of principle of law laid down in Vaish Aggarwal (supra), I am of the considered opinion that the Rent Controller Authority, Bilaspur is absolutely justified in rejecting the application under Section 11 of CPC and sufficient and valid reasons have been assigned by the Rent Controller Authority in which I do not find any jurisdictional error in the impugned order.

(6) Consequently, the writ petition deserves to be and is accordingly dismissed.

Sd/-

**(Sanjay K. Agrawal)**  
Judge

L/-