

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.674 of 2017

Shashank Shekhar Mukharji, S/o late Shri Prashant Kumar Mukharji, aged about 52 years, R/o Anjali Vihar Science College Road, Bilaspur, District, Bilaspur (CG).

---- Petitioner

Versus

Purshottam Patel, S/o Shri Uttam Prasad Patel, aged about 48 years, R/o Near Sattiguri Chauk Raigarh, Tahsil and District Raigarh (CG).

---Respondent

For Petitioner : Mr. Bhupendra Singh, Advocate

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

14/09/2017

(1) By the impugned order dated 02.08.2017, the trial Court has rejected the application filed by the petitioner/defendant herein under Order 7 Rule 11 of CPC against which, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant.

(2) Learned counsel appearing for the petitioner/defendant would submit that the trial Court has committed jurisdictional error in rejecting the application under Order 7 Rule 11 of CPC.

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

(4) The petitioner has raised an objection by filing the application under Order 7 Rule 11 of CPC for rejecting the suit as framed and filed is barred by limitation. The trial Court has rejected the same and held that

the question of limitation is a mixed question of law and fact and it will be decided at the time of final hearing on merit.

(5) It is well settled principle of law that the question of limitation is a mixed question of law and fact, requires not only examination of pleading but also requires recording of 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**).

(6) 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 trial Court is absolutely justified in rejecting the application under Order 7 Rule 11 of CPC. Sufficient and valid reasons have been assigned by the trial Court in which I do not find any jurisdictional error in the impugned order.

(7) Consequently, the writ petition deserves to be and is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-