

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No.58 of 2016**

1. South Eastern Coalfields Limited, a Union of India Undertaking and Subsidiary of Coal India Limited, Through the Chairman-Cum-Managing Director, Seepat Road, Bilaspur (CG)
2. South Eastern Coalfields Limited, a Union of India Undertaking and Subsidiary of Coal India Limited, through the Chief Engineer (Civil), Seepat Road, Bilaspur (CG)

----Applicants**Versus**

M/s. Murlidhar and Company, a registered partnership firm, having its office at Super Market, Sitabuldi, Nagpur, through partner, Shri Murlidhar Vittaldas Maheshwari, aged about 65 years, Occupation-business, resident of Wardha Road, Nagpur

---- Respondent

 For Applicants : Mr.Gautam Khetrapal, Advocate
 For Respondent : Mr.Somnath Verma, Advocate

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

19/09/2018

1. By the impugned order, the application under Order 7 Rule 11 of the CPC filed by the applicants/defendants has been rejected by the trial Court.
2. Mr.Gautam Khetrapal, learned counsel for the applicants/defendants, would submit that the suit is barred by the principles of res-judicata, therefore, the trial Court is absolutely unjustified in rejecting the application under Order 7 Rule 11 of the CPC.

3. Mr.Somnath Verma, learned counsel for the respondent, would submit that the applicants' earlier application under Order 7 Rule 11 of the CPC has already been rejected by order dated 7.1.2014 and on the same ground, second application under Order 7 Rule 11 of the CPC is not maintainable.
4. I have heard learned counsel for the parties, perused the impugned order and other documents appended with civil revision.
5. The question is whether the plea of res-judicata can be considered under Order 7 Rule 11 of the CPC. Res-judicata involves mixed question of law and fact and it requires not only examination of plaint but also other evidence.
6. The said issue has been authoritatively decided by the Supreme Court in the matter of **Kamala and others v. K.T. Eahwara SA and others**¹ in which it has been held as under:-

“22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject- matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.”

7. The above-stated judgment i.e. **Kamala** (supra) was followed with approval in **Vaish Aggarwal Panchayat v. Inder Kumar &**

¹ (2008) 12 SCC 661

Others². Thus, the plea of res-judicata involves mixed question of law & fact and it cannot be considered under Order 7 Rule 11 of the CPC in light of above-stated judgments.

8. There is yet another reason for upholding the order of the trial Court as the applicants' earlier application under Order 7 Rule 11 of the CPC has already been decided and rejected on 7.1.2014 and that has attained finality.
9. In view of that, I do not find any merit in this civil revision. Accordingly, the civil revision is dismissed. However, the trial Court is at liberty to frame issue on the plea of res-judicata and decide along with other issues. The suit is pending since 2000, the trial Court is directed to expedite the trial and conclude the same within a period of three months from the date of receipt of certified copy of this order and inform to Registry of this Court that suit has been concluded.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-

² AIR 2015 SC 3357