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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 119 of 2016**

Vinod Rai Tripathi, S/o Late Shri Nanalal Mahashankar Tripathi, aged about 94 years, R/o Faisal Bada, Near Aata Chakki, Juna Bilaspur, Tehsil/District- Bilaspur (C.G.) through proprietor, Vijay Stores, Sadar Bazar, Distt- Bilaspur (C.G.)

---- Applicant/defendant No. 1**Versus**

1. Rajendra Kumar Mishra, S/o Late Madan Mohan Mishra, R/o Gondpara, Bilaspur, Tahsil and District – Bilaspur (C.G.), present Residence-116, Vaishali Nagar, Bhopal (M.P.) (Plaintiff)
2. State of Chhattisgarh, through Collector, Bilaspur (C.G.) (Defendant No. 2)

---- Respondents**Civil Revision No. 120 of 2016**

Vinod Rai Tripathi, S/o Late Shri Nanalal Mahashankar Tripathi, aged about 94 years, R/o Faisal Bada, Near Aata Chakki, Juna Bilaspur, Tehsil/District- Bilaspur (C.G.) through proprietor, Vijay Stores, Sadar Bazar, Distt- Bilaspur (C.G.), Power of Attorney Holder Jagdish Kumar Tripathi, S/o Shantilal Tripathi, A/A 66 years, R/o Gurukripa Fazalbada, Juna Bilaspur, Distt. Bilaspur (C.G.)

---- Applicant/defendant No. 1**Versus**

1. Surendra Kumar Mishra, S/o Late Madan Mohan Mishra, R/o Gondpara, Bilaspur Tehsil and District – Bilaspur (C.G.) (Plaintiff)
2. State of Chhattisgarh Through Collector, Bilaspur (C.G.)

(Defendant No. 2)

---- Respondents

For Applicant	: Mr. Arvind Shrivastava, Advocate.
For Respondent No. 1	: None present, though served.
For Respondent No. 2/State	: Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/08/2018

1. This batch of civil revisions under Section 115 of the Code of Civil Procedure (henceforth "CPC") are directed against the order dated 12.07.2016 passed by the 6th Additional District Judge, District Bilaspur in Civil Suit No. 276-A/2015 & Civil Suit No. 273-A/2015, respectively rejecting the application under Order 7 Rule 11 of the CPC filed by the applicant/defendant.

[For the sake of convenience, Civil Revision No. 119 of 2016 is taken-up as the lead case].

2. Plaintiff / respondent No.1 herein filed a suit for declaration of title and permanent injunction. In the relief clause, it has been claimed that the sale deed dated 28.3.2003 executed by his mother Smt. Janki Bai Mishra in favour of defendant No. 1/applicant herein be declared as null and void due to non-payment of agreed consideration amount. It was also prayed in alternative, if the sale deed cannot be declared as null and void then balance cash consideration be directed to be paid with interest by defendant No. 1 to the plaintiff; and also sought restoration of possession in his favour, for which the court fee of Rs. 560/- has been paid by the plaintiff.

3. The Defendant, prior to filing of his written statement, filed an application under Order 7 Rule 11 of CPC stating that the plaintiff has no cause of action to bring this suit against the defendant, the suit has not been properly valued and no adequate court fee has been paid; and the suit is also barred by limitation.

4. The trial Court, vide its impugned order dated 12.07.2016, simply rejected the said application holding that at the preliminary stage, the questions raised by defendant

No.1 in the application under Order 7 Rule 11 CPC, cannot be considered.

5. I have heard learned counsel appearing for the applicant and perused the order impugned with utmost circumspection.

6. In the matter of **R.K. Raja Vs. U.S. Rayudu & another**¹, their Lordships of the Supreme Court have held that once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose off the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement. (See : ***Saleem Bhai and others V. State of Maharashtra and others***²) . It was further held that once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial .

7. The Supreme Court in **R.K. Raja** (Supra) quoted with approval the judgment of the Supreme Court in **Sopan Sukhdeo Sable & Ors. Vs. Assistant Charity Commissioner & others**³ and **Saleem Bhai** (supra) stating as under:-

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. ...”

1 (2016) 14 SCC 275

2 (2003) 1 SCC 557

3 (2004) 3 SCC 137

In **Saleem Bhai case** (supra), the Supreme Court has also held that

“9.a direction to file the written statement without deciding the application under Order VII Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction of the trial court.”

8. Finally, the Supreme Court in **R.K. Raja** (Supra), held as under:-

“8. The procedure adopted by the court is not warranted under law. Without disposing of an application under Order 7 Rule 11 CPC, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly.”

9. At this stage, it would be appropriate to notice Order 7 Rule 11 of the CPC, which states as under:-

“**11. Rejection of plaint.-** The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is property valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by the Court, fails to do so;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9”

10. The trial Court can exercise the power under Order 7 Rule 11 of the CPC at the threshold of the proceedings of the suit; and also in absence of any restriction placed to be exercised at any stage of subsequent proceedings. (See **Vithalbhai (P) Ltd. Vs. Union Bank of India**⁴)

11. In view of above legal position, the trial Court is absolutely unjustified in holding that at the preliminary stage, application under Order 7, Rule 11 of the CPC cannot be considered on its merits, which absolutely runs contrary to the decision rendered by this Court in Vithalbhai (P) Ltd. (supra).

12. In view of the foregoing, the impugned order dated 12.07.2016 is set aside. The matter is remitted to the trial Court for considering the application under Order 7 Rule 11 of the CPC afresh on its own merit in accordance with law after hearing the affected parties.

13. Accordingly, the civil revisions are allowed to the extent indicated hereinabove.
No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

