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HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 173 of 2016**

{Arising out of Order dated 16.11.2016 passed in Civil Suit No. 10-A/2015 by the 1st Additional District Judge, Korba}

Naresh Kumar Agrawal son of Late Rajaram Agrawal, aged about 50 years, Resident of Bankimongra, Tahsil Katghora, Civil and Revenue District Korba, Chhattisgarh

---- **Petitioner****Versus**

1. Moh. Mustak, aged about 44 years, son of Shri Mo. Wasim, resident of Mustak Denting and Welding Works, Pancham Singh Chall, TP Nagar, Korba, Civil and Revenue District Korba, Chhattisgarh.
2. Sudip Kumar Moda son of Mahendra Kumar Moda, resident of Power House Road, Korba, Civil and Revenue District Korba, Chhattisgarh.
3. Commissioner, Nagar Palik Nigam, Korba, Civil and Revenue District Korba, Chhattisgarh.
4. The State of Chhattisgarh, Through: The Collector, Korba, Civil and Revenue District Korba, Chhattisgarh.

---- **Respondents**

For Petitioner	: Shri M.K.Bhaduri, Advocate.
For Respondent No. 1	: Shri Vivek Kumar Tripathi, Advocate.
For Respondent No. 3.	: Shri B.D.Guru, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Judgment on Board**28/06/2018**

1. This revision petition under Section 115 of the Code of Civil Procedure, 1908; for short 'CPC' is against the order by which the Court below refused to reject the plaint under Order 7 Rule 11 of the CPC on the plea of the Defendant that the mandatory suit notice under Section 401 of the Municipal Corporation Act, 1956; for short, 'Act', was not duly issued to the Corporation but only to the Commissioner of the Corporation.
2. The learned counsel for the Revision Petitioner pointed out that the notice is issued to the Commissioner of the Corporation and not to the

Corporation as such. He is right in arguing that the Municipal Corporation is a legal entity and is a juristic person capable of being sued and which has a right to sue. That notwithstanding, different questions would arise as to whether notice to the Commissioner would be due notice to the Corporation. It could also be a case where the Court may have to consider whether the notice issued to the Commissioner is actually intended to be one addressed to the Corporation. Obviously, such questions are mixed questions of facts and law which cannot be decided as a preliminary issue or to be treated as one sufficient enough to reject the plaint under Order 7 Rule 11 of the CPC. The Court below was therefore abundantly justified in holding that the said issue as to the validity or sufficiency of the notice under Section 401 of the Act ought to be left open for consideration during the trial of the suit and the plaint is not liable to be rejected.

3. For the aforesaid reasons, this revision petition fails. Resultantly, it is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE