

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No.30 of 2017**

Mohd. Shakil Qureshi, S/o. Mohd. Hanif Qureshi, Aged about-40 years, R/o. Sakti, Tehsil-Sakti, District-Jangir-Champa (CG)

----Applicant**Versus**

1. Damru Das, S/o. Sovind Gabel, Aged about-58 years,
2. Beera Bai W/o. Late Raghuwar Singh Gabel, Aged about-75 years,
Both the respondents No. 1 & 2 are R/o. Village-Nawapara Khurd, Tehsil-Sakti, District-Jangir-Champa (CG)
3. Zila Sahkari Kisi Avam Gramin Vikash Bank Maryadit, Through Bikri Adhikari, Janjgir, District-Janjgir-Champa (CG)
4. Zila Sahkari Kisi Avam Gramin Vikash Bank Maryadit, Janjgir, District Janjgir-Champa (CG)
5. Sub-Registrar, Cooperative Society, Janjgir, District-Janjgir-Champa (CG)
6. State of Chhattisgarh Through Collector Janjgir-Champa, District Janjgir-Champa (CG)

---- Respondents

For Applicant	:	Mr.Sarfaraz Khan, Advocate
For Respondents No.1&2	:	Mr.Ishwar Jaiswal, Advocate
For Respondents No.3&4	:	Mr.Vikas Pandey, Advocate
For Respondents No.5&6	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****19/09/2018**

1. This civil revision is directed against the order dated 13.1.2017 passed by the trial Court by which the petitioner's (defendant No.4) application under Order 7 Rule 11 (d) of the CPC has been rejected on the ground that issue with regard to jurisdiction has already been framed by the trial Court.

2. Learned counsel for the applicant would submit that the trial Court ought to have been decided the application under Order 7 Rule 11(d) of the CPC on merits as the application has to be decided first and then only suit can proceed further.
3. On the other hand, learned counsel for respondents No.1 and 2 would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
5. 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 .
6. 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:-

¹(2016) 14 SCC 275

²(2003) 1 SCC 557

³(2004) 3 SCC 137

“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. ...”

7.

In **Saleem Bhai's** case (supra), the Supreme Court has also held as under:-

“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. Since the trial Court was obliged to decide the application under Order 7 Rule 11(d) of the CPC on merits and it cannot be postponed till the decision of the issue framed in this regard by the trial Court, the impugned order is set aside. The trial Court is directed to decide the application under Order 7 Rule 11(d) of the CPC in accordance with law on merits before proceeding further with the suit.
11. The writ petition is allowed to the extent indicated hereinabove. Record of the trial Court be sent forthwith for proceeding further. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-