

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CIVIL REVISION No. 55 of 2018**

Shri Narmada Prasad Sharma, aged about 50 years, Caste – Brahmin, R/o
Ward No. 01, Shankar Nagar, Mahasamund, District Mahasamund (C.G.)

---- Applicant / Defendant

Versus

Jitendra Idikar S/o Late Shri Khemrao Idikar, Aged about 45 years, R/o
Ward No. 19, Clubpara, Mahasamund, Thana Mahasamund, Tahsil and
District Mahasamund (C.G.)

---- Respondent / Plaintiff

For Applicant	:	Mr. Arvind Shrivastava, Advocate.
For Respondent	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/09/18

1. The applicant / defendant has filed this revision petition questioning the order passed by the trial Court whereby the application filed by the defendant under Order 7 Rule 11 of the C.P.C. has been rejected without deciding the application on merits.
2. Learned counsel for the applicant submits that the impugned order is unsustainable and bad in law and is liable to be set aside.
3. I have heard learned counsel for the applicant.
4. The trial Court has rejected the application holding that without filing the written statement the application under Order 7 Rule 11 of the C.P.C. has been filed by the applicant whereas the grounds raised by the applicant in the application could have been raised in the written statement also and

can not be decided at preliminary stage if it does not involve mixed question of law and fact.

5. The Supreme Court in the case of **R.K. Roja v. U. S. Rayudu and Anr**¹, has observed in paragraph 5 and 20 as under :-

“5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of 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 (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement thereafter (see Saleem Bhai v. State of Maharashtra, MANU/SC/1185/2002 : (2203) 1 SCC 557. But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable v. Charity Commr., MANU/SC/0071/2004 : (2204) 3 SCC 137 (SCC pp. 148-49)

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 objection 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 obligation 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.”

6. In view of the above stated legal position the finding of trial Court that

¹ (2016) 14 SCC 275

the application under Order 7 Rule 11 C.P.C. has to wait till filing of written statement is closed runs contrary to the decision rendered in the matter of *R.K. Roja* (supra) deserves to be set aside. The trial Court is directed to consider and dispose of the said application on its own merits and in accordance with law.

7. The writ petition is allowed to the extent indicated herein above.

Sd/-

(Sanjay K. Agrawal)
Judge

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CIVIL REVISION No. 55 of 2018**

Ramsharan Sharma S/o Shri Narmada Prasad Sharma, aged about 50 years, Caste – Brahmin, R/o Ward No. 01, Shankar Nagar, Mahasamund, District Mahasamund (C.G.)

---- **Applicant / Defendant**

Versus

Jitendra Idikar S/o Late Shri Khemrao Idikar, Aged about 45 years, R/o Ward No. 19, Clubpara, Mahasamund, Thana Mahasamund, Tahsil and District Mahasamund (C.G.)

---- **Respondent / Plaintiff**

For Applicant	:	Mr. Arvind Shrivastava, Advocate.
For Respondent	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/09/18

1. While disposing of the revision petition on 11.09.2018, due to inadvertent mistake in the cause title, the name of applicant Ramsharan Sharma has been left out.
2. Accordingly, the order dated 11.09.2018 is modified and corrected and the name of the applicant be read as Ramsharan Sharma S/o Shri Narmada Prasad Sharma in the cause title.

SD/-

(Sanjay K. Agrawal)
Judge