NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 50 of 2019

Netram S/o Ghanaram Verma, aged about 45 years, Resident of Village Sarseni, Post- Guma, Tahsil- Palari, District – Baloda Bazar- Bhatapara, Chhattisgarh. (Defendant No. 1)

---- Applicant

Versus

1. Surendra Kumar S/o Sadhuram Navange, aged about 44 years, Resident of Village Sarseni, Post- Guma, Tahsil – Palari, District- Baloda Bazar- Bhatapara, Chhattisgarh. (Plaintiff)
2. State of Chhattisgarh, through Collector, Baloda Bazar, District Baloda Bazar, Bhatapara, Chhattisgarh. (Defendant No. 2)

--- Respondent

For Petitioner	:	Mr. Sunil Tripathi, Advocate
For State	:	Mr. Ravi Bhagat, Deputy Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18.06.2019

1. In Civil Suit No. 59A/2016 filed by the plaintiff/respondent No. 1 for recovery of the loan amount of Rs. 1,83,600/- given by him to defendant No. 1/applicant, the defendant No. 1/applicant moved an application under Order 7 Rule 11 of the CPC *inter alia* stating that the suit filed by the plaintiff/respondent No. 1 is barred by Section 11 (h) of the Madhya Pradesh Money-lenders Act, 1934 (hereinafter referred to as the "Act of 1934"). That objection has been turned down by learned trial Court vide order dated 22/04/2019 which has been assailed by the applicant/defendant No. 1 in this civil revision.

2. Mr. Sunil Tripathi, learned counsel for the defendant No.

1/applicant submits that the trial Court is absolutely unjustified in rejecting the application Under Order 7 Rule 11 of the CPC as the suit is barred by Section 11 (h) of the Act of 1934, therefore, the plaint ought to have been rejected invoking Order 7 Rule 11 (d) of the CPC.

3. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.

4. The careful perusal of the plaint would show that it is a case of the plaintiff/respondent No. 1 that the defendant No. 1/applicant had taken loan of Rs. 1,83,600/- for construction of building and for marriage purposes. Plaintiff/respondent No. 1 has not admitted that he is involved in money-lending and is covered by the Act of 1934. In that view of the matter, the trial Court has held that the case is at the stage of trial and without recording evidence, the necessity of the certificate under the Act of 1934 cannot be adjudicated.

5. In my considered opinion and considering the averment of the plaint, plaintiff/respondent No. 1 has not admitted to be a money-lender involved in the business of money-lending under the Act of 1934. Therefore, considering the written statement, it cannot be held that the suit is barred by Section 11 (h) of the Act of 1934. Therefore, the impugned order dated 22/04/2019 passed by the trial Court cannot be held bad in law and petition is accordingly dismissed. However, learned trial Court is directed to frame issue, if not framed and decide the same in accordance with law.

6. With the aforesaid observation, this civil revision stands disposed of without noticing to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet