

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1529 of 2018

Chunni Lal, Son of Late Rajaram Gupta, resident of Muhalla- Barah Pathar,
P.O.& P.S.- Dehri, District- Rohtas.

... .. Petitioner/s

Versus

1. Anil Kumar Gupta.

2. Rajesh Kumar Gupta.

3. Om Prakash Gupta.

All sons of Late Mahadeo Prasad.

All resident of Muhalla- West Mohan Bigha, Patel Gali, P.S.- Dehri, P.O.-
Dalmianagar, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pancham Lal Jaiswal, Advocate
		Mr. Chandrashekhar Prasad, Advocate
For the Respondent/s	:	Mr. Sanjay Parasmani, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

7 07-08-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 01.08.2018 passed by Civil Judge (S.D.) in Title Suit No. 529 of 2015 whereby the learned Court below dismissed the suit under Order 7 Rule 11 (f) of C.P.C. for not filing required Court fee.

3. The plaintiff / petitioner filed a suit registered as Title Suit No. 529 of 2015 praying to decree the suit directing the defendants to comply with terms and conditions of two purchase registered agreement deed Nos. 4831 and 4832 both dated 06.05.2008 and to execute sale deed accordingly in favour of the plaintiff with respect to suit property. The said suit has



been dismissed under Order 7 Rule 11 (f) of C.P.C. vide the impugned order.

4. Learned counsel for the petitioner submits that due to non-availability of required Court fee of Rs. 50,000/- in Franking Machine, the petitioner was unable to file the Court fee in the learned Court below. It was not the fault of the petitioner as he was ready to make the payment. He further submits that petitioner shall file the required Court fee of Rs. 50,000/- as required in the Title Suit No. 529 of 2015.

5. Learned counsel for the respondents opposes the prayer of the petitioner and submits that sufficient opportunity was given to him for filing the same but he has not filed the Court fee within the said period. Accordingly, the learned Court below is justified in dismissing the title suit of the petitioner. The plaintiff is not precluded from filing a fresh suit on the same cause of action where plaint had been rejected for non-payment of Court fee.

6. Having heard the learned counsel for the parties and on perusal of the impugned order, it appears that the petitioner on 01.08.2018 prayed for time before the learned Court below on the ground of non-availability of required Court fee of Rs. 50,000/- in Franking Machine. The fault cannot be



attributed wholly on the petitioner as the same was due to Franking Machine and the learned Court below ought to had given some time to file the required Court fee. The suit was in initial stage.

7. The discretion conferred on the Court by Section 149 C.P.C. is normally expected to be exercised in favour of the litigant except in case of contumacy or positive *mala fides* and by extending the time to pay the deficient Court fee, no vested right of either party has been taken away and the dispute with regard to Court fee is between the State Government and the concerned litigant.

8. Order 7 Rule 11 (f) states that if a plaintiff does not comply with order 7 Rule 9 of the C.P.C., the plaint can be rejected. Rule 9 Order 7 of C.P.C. specifies the procedure after admission of the plaint. The plaintiff needs to attach a list of documents, a number of copies as required by the Court.

9. In the present case, the learned Court below at the initial stage dismissed the suit under Order 7 Rule 11 C.P.C. instead of rejecting the plaint which would cause serious injury to the petitioner as the *lis* has not been adjudicated by the learned Court below. There is clear distinction between rejection of plaint and dismissal of a suit. A dismissal of suit would



necessarily result in a subsequent suit being barred by principles of *res judicata*, whereas this would not be the case involving 'return of the plaint' or 'rejection of a plaint'.

10. In the interest of justice, one opportunity is given to the petitioner for depositing the required Court fee before the learned Court below and as prayed for, four weeks time is granted to petitioner for filing the said Court fee in the said suit after receiving of this order to the learned Court below. On depositing the required Court fee in the suit in the learned Court below by the plaintiff / petitioner, the learned Court below shall proceed the suit in accordance with law.

11. Accordingly, the impugned order dated 01.08.2018 passed by the learned Court below is set aside and this Civil Miscellaneous Application is allowed with the aforesaid direction.

(Sunil Dutta Mishra, J)

ashutosh/-

U			
---	--	--	--

