HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Revision Petition No. 349/2024

Mahipal Dhaka Son Of Shri Ratnaram Dhaka, Resident Of Village Hapas, Tehsil Laxmangarh, Distt. Sikar, Second Address- At Present Residing At Vivek Colony, Kumbha Nagar, Nawalgarh Road, Sikar, Tehsil And Distt. Sikar

----Petitioner

Versus

1. Smt. Sushila D/o Shri Surjan Singh, Resident Of Vivek Colony, Kumbha Ram Nagar, Nawalgarh Road, Sikar, Tehsil And Distt. Sikar, Rajasthan Mobile No. 9461538404
2. Ranjeet Singh S/o Shri Bachchan Singh, Aged About 66 Years, Resident Of Vivek Colony, Kumbha Ram Nagar, Nawalgarh Road, Sikar, Tehsil And Distt. Sikar, Rajasthan Mobile No. 9461538404
3. Nagar Parishad, Sikar, Through Commissioner, Office Kalyan Bhawan, Near Ambedkar Circle, Rani Sati Road, Sikar, Tehsil And Distt. Sikar

----Respondents

For Petitioner(s) : Ms. Anita Agarwal
For Respondent(s) :

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/12/2024

Instant revision petition is preferred by petitioner aggrieved from dismissal of application under Order VII Rule 11 (d) of CPC and 35A of CPC on 29.08.2024 in civil suit No.124/2024 by learned Additional Civil Judge No.3, Sikar.

Learned counsel for petitioner submitted that plaintiff respondent has filed a suit for mandatory and permanent injunction alleging violation of building by-laws by present

petitioner defendant. She also submitted that before filing the suit the plaintiff has not made any representation to the respondent No.2 Municipal Council Sikar for taking action on construction of building in violation of building by-laws. She further submitted that Rajasthan Municipal Act 2009 is itself a Code, wherein specific provisions for action were provided and when alternative and efficatious remedy is available then a suit is not maintainable and trial court has committed serious error while dismissing application of petitioner. She also referred judgment in case of **Dr. Ranbeer Bose and Anr. Vs. Anita Das and Anr. 2024 INSC 379** and submitted that it was duty of the plaintiff to approach Municipal authority and if there is no proper response then only he can file a case before any court but in the instant case no such representation was ever made, by the plaintiff. At last, she submitted that the suit is not maintainable and liable to be dismissed.

3. Heard learned counsel for petitioner and perused the record along with judgment as cited by learned counsel for petitioner.

4. Plaintiffs have filed a civil suit for mandatory and permanent injunction alleging construction of building by present petitioner (defendant No.1) in violation of building by-laws. In the plaint, it was mentioned that the plaintiff informed to the defendant No.2 Municipal body about illegal construction raised by defendant No.1. The plaintiff No.1 has claimed that due to unauthorized and illegal construction by defendant No.1, her house turned into a dangerous condition.

5. In case of **Dr. Ranbeer Bose and Anr. Vs. Anita Das and Anr. (supra)** Hon’ble Supreme Court has considered a civil

appeal from writ under Article 226 of Constitution of India, wherein Hon'ble Supreme Court has observed that if any irregularity committed in raising construction then proper remedy is to approach municipal authority and if there is no proper response then civil court is appropriate forum for ventilating grievances. It is quite clear that writ petition can be entertained only after notice for demand of justice and in case of **Dr. Ranbeer Bose and Anr. Vs. Anita Das and Anr. (supra)** the matter was agitated by directly filing a writ petition. Herein it is a civil suit wherein plaintiffs have mentioned information about unauthorized construction raised by defendant No.1 to Municipal Board.

6. Considering the facts and circumstances of the cause of action as mentioned in plaint the judgment as referred by learned counsel for is not applicable in the instant case.

7. An application under Order 7 Rule 11 (d) CPC can only be allowed if suit is barred by any law but herein a civil suit for cause of action as mentioned in the plaint as maintainable before the civil court and the appropriate forum is also civil court.

8. In view of aforesaid the application under Order VII rule 11 CPC was rightly dismissed by learned trial court and there is no perversity or illegality in the order passed by the trial court thus the revision petition is liable to be dismissed.

9. Accordingly, revision petition is hereby dismissed. Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J

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