

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.163 of 2025

1. Nishant Raj Son of Govind Prasad Rajgarhia, Resident of Mohalla Lal Bazar, Ward No. 33, under Bettiah Nagar Parishad, P.O. and P.S. Bettiah Town, Dist. West Champaran. Presently resident of Mohalla Prestige Ackopolis, Hosur Road, P.O. Viveknagar, P.S. Adugoli, Bangalore, Karnataka.
2. Govind Prasad Rajgarhia @ Govind Rajgarhia, Son of Late Surajmal Rajgarhia, Resident of Mohalla Lal Bazar, Ward No. 33, under Bettiah Nagar Parishad, P.O. and P.S. Bettiah Town, Dist. West Champaran.

... .. Petitioner/s

Versus

1. Sneh Lata Rajgarhia, Widow of Late Ajay Kumar Rajgarhia, Resident of Mohalla Lal Bazar, Ward No. 33, under Bettiah Nagar Parishad, P.O. and P.S. Bettiah Town, Dist. West Champaran Presently resident of B. 125, Central Park, G.I.D.C. Pandesara, P.O. Pandesara, P.S. Pandesara, District Surat, Gujarat.
2. Smt. Sharda Devi, W/o Kedar Prasad, R/o- Mohalla- Shanti Nagar, Bettiah, P.O. Bettiah, P.S. Bettiah Town, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vijay Shanker Tiwari, Adv. Ms. Abhilasha Jha, Adv. Mr. Durgesh Shukla, Adv.
For the Respondent no. 1	:	Mr.Parth Gaurav, Adv. Mr. Manogya Singh, Adv. Mr. G.R. Sahni, Adv. Mr. Ashutosh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-02-2025

Record taken up on mentioning made on behalf of the petitioner.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondent no. 1.

3. Learned counsel for the petitioners submits that the petitioners limits his prayer only to the relief mentioned in



paragraph no. 1(II) and only seeks directions to the learned Sub Judge V, Bettiah to dispose of his application dated 31.03.2023 filed under Order 7 Rule 11 of the Code of Civil Procedure (in short “the Code”) by the petitioner who is defendant before learned trial Court. Learned counsel submits that after filing of application on 31.03.2023, despite opportunity, plaintiff did not file rejoinder and vide order dated 06.09.2023, learned trial court debarred the plaintiff/respondent from filing the rejoinder. Thereafter the matter has been coming up for hearing on the petition dated 31.03.2023 by Order 7 Rule 11 of the Code. Learned counsel further submits that prior to filing of the application under Order 7 Rule 11, the plaintiff has filed a petition under Order 26 Rule 9 of the Code on 30.11.2022 and a rejoinder to which was filed on 20.12.2022 by the defendants. Thereafter, the plaintiff filed a number of petitions under Order 6 Rule 17 of the Code and also under Order 1 Rule 10 of the Code. But the learned trial court has not taken steps for disposal of the petition filed under Order 7 Rule 11 of the Code before any other application considering its nature.

4. Learned counsel referred to a decision of the Madhya Pradesh High Court in the case of ***Rajpal Singh Vs. Sunderlal, W.P. 14349 of 2014***, wherein the learned Single



Judge held that an application filed under Order 7 Rule 11 of the Code goes to the root of the matter and if the objections filed under this provision are sustained, the plaintiffs could be non-suited and on this ground, the learned Singh Judge held that even prior to hearing any injunction application, the petition filed under Order 7 Rule 11 of the Code should be heard and disposed of. The learned counsel further refers to the decision of the Hon'ble Supreme Court in the case of ***Saleem Bhai and Ors. Vs. State of Maharashtra and Ors.*** reported in ***2003 1 SCC 557*** wherein the Hon'ble apex Court has observed that the trial court can exercise the power under Order 7 Rule 11 of the Code at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and further held that a direction to file the written statement without deciding the application under Order 7 Rule 11 of the Code cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. Learned counsel also refers to a decision of this Court in the case of ***Prashant Rajgarhia and Anr. Vs. Nishant Raj and Ors.*** passed in ***Civil Misc. Jurisdiction Case No. 157 of 2025*** wherein the scope of Article 227 with regard to issuing directions to the trial court about disposal of pending applications have been



discussed. Learned counsel further submits that the plaintiff/respondent wants to delay the matter and is not allowing the application filed under Order 7 Rule 11 of the Code to be disposed of.

5. On the other hand, the learned counsel appearing on behalf of the respondent no. 1 submits that the Court should not issue directions for disposal of the application pending under Order 7 Rule 11 of the Code filed by the petitioner for the reason that the said application has never been pressed by the petitioner. Learned counsel further refers to the decision of the Hon'ble Constitution Bench of the Hon'ble Supreme Court in the case of ***High Court Bar Association, Allahabad vs. State of Uttar Pradesh and Ors.*** reported in ***(2024) 6 SCC 267*** wherein the Hon'ble Supreme Court in paragraph nos. 40, 41, 42 and 43 has discussed the situation under which the trial courts are directed to dispose of certain cases in time bound manner and issued certain guidelines and held that Constitution Courts should not normally fix a time-bound schedule for disposal of cases pending in any court and further held that orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations. The learned counsel stressed on paragraph no. 43 of the decision



which reads as under:

“There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional Courts. Those litigants who can afford to approach the constitutional Courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The Courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. In a sense, no Court of law is inferior to the other. This Court is not superior to the High Courts in the judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should be best left to the concerned Courts unless there are very extraordinary circumstances.”

Learned counsel further submits that since every litigant cannot approach this Court, the ones who can approach this Court should not be given any priority and should not be allowed any undue advantage by giving directions for disposal of their cases in time bound manner.

6. Learned counsel appearing for the petitioners, by way of reply, submits that there was no need to press the application filed under Order 7 Rule 11 of the Code as the order sheet would show the matter has been coming up for hearing



and though the plaintiff respondent has been debarred from filing rejoinder no orders could be passed.

7. I have given my thoughtful consideration to the rival submission of the parties.

8. Perusal of record shows the matter before the learned trial court on a petition filed under Order 7 Rule 11 of the Code has been continuing at the stage of hearing since 06.11.2023. Further from the order sheets it transpires that the said petition was fixed for hearing on 07.03.2024, 15.03.2024, 16.03.2024, 17.05.2024, 13.06.2024, 05.07.2024, 31.07.2024 and 09.09.2024, it could not be said that the learned trial court has been diligent in proceeding with the matter before it. For disposal of a single application, the matter had been adjourned so many times and it is really unfortunate and proceeding in this manner by the learned trial court compels this Court to interfere in the matter as the learned trial court is not properly discharging its responsibility and the jurisdiction vested in it. Therefore, the learned trial court is directed to take up the petition filed under Order 7 Rule 11 of the Code by the defendant/petitioner along with the petition dated 05.02.2024 filed by the plaintiff for disposal at the earliest and preferably within a month from the date of receipt/production of copy of



this order before any other petition considering the nature of the petition filed under Order 7 Rule 11 of the Code. A petition filed under Order 7 Rule 11 of the Code goes into the root of the matter and if allowed would result into end of the matter.

9. The parties are directed to cooperate and not seek unnecessary adjournments and allow the matter to proceed to its logical conclusion.

10. With the aforesaid directions, the present petition is disposed of.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.02.2025
Transmission Date	N/A

