
Praveen Kumar Vs Dinesh Arora

**Civil Revision Petition No. 133 Of 2018, Civil Miscellaneous Application No. 26720
Of 2018**

Court: Delhi High Court

Date of Decision: Nov. 15, 2019

Acts Referred:

Code Of Civil Procedure, 1908 " Order 7 Rule 11, Order 7 Rule 11(d)

Hon'ble Judges: Sanjeev Sachdeva, J

Bench: Single Bench

Advocate: Rachita Garg, Anil Sharma, Arun Baali, Sahil Batar, Yachna Juneja

Final Decision: Allowed

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns order dated 06th June, 2018 whereby the Trial Court has deferred the consideration of an application under Order 7 Rule 11(d)

CPC filed by the petitioner and directed the petitioner to first file its written statement.

2. Subject Suit was filed by the respondent seeking specific performance of contract and injunction. Petitioner filed an application under Order 7 Rule

11(d) CPC contending that the Suit was hopelessly barred by limitation.

3. By the impugned order, the Trial Court directed the petitioner to first file the written statement and deferred the consideration of the application

under Order 7 Rule 11(d) CPC.

4. While issuing notice on 11.07.2018, there was a direction by this court that operation of the impugned order dated 06.06.2018 shall remain stayed.

5. Learned counsel for the respondent submits that said interim order dated 11.07.2018 is being interpreted by the Court to mean that the progress in

the Suit has been stayed.

6. Learned counsel further submits that since the order was passed over a year half ago, he has no objection to the impugned order being set aside

and the application under Order 7 Rule 11(d) CPC filed by the petitioner being taken up for consideration, even prior to the petitioner filing the written

statement.

7. It is the settled position of law that the Trial Court cannot insist upon the defendant to first file the written statement prior to consideration of the

application under Order 7 Rule 11(d) CPC. The Supreme Court of India in *Saleem Bhai & Others Versus State of Maharashtra* (2003) 1 SCC 557

held that for deciding an application under Order 7 Rule 11 CPC the averments in the plaint are germane and the pleas taken in the Written Statement

would be wholly irrelevant at that stage. Therefore, the order of the Trial Court directing filing of the Written Statement without deciding the

application under Order 7 Rule 11 CPC was held to be bad and was set aside and direction was issued to the Trial Court to decide the application.

8. In view of the above, impugned order dated 06th June, 2018 is set aside. The Trial Court is directed to expeditiously dispose of the application under

Order 7 Rule 11(d) CPC filed by the petitioner preferably within a period of one month from the next date before the Trial Court.

9. The petition is allowed in the above terms.

10. Order dasti under signatures of the Court Master.