

Narmada Prasad Sharma Vs Jitendra Idikar

Court: Chhattisgarh High Court

Date of Decision: Sept. 11, 2018

Acts Referred: Code Of Civil Procedure 1908 " Order 7 Rule 11

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Arvind Shrivastava, Manoj Paranjpe

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. The applicant / defendant has filed this revision petition questioning the order passed by the trial Court whereby the application filed by the

defendant under Order 7 Rule 11 of the C.P.C. has been rejected without deciding the application on merits.

2. Learned counsel for the applicant submits that the impugned order is unsustainable and bad in law and is liable to be set aside.

3. I have heard learned counsel for the applicant.

4. The trial Court has rejected the application holding that without filing the written statement the application under Order 7 Rule 11 of the C.P.C. has

been filed by the applicant whereas the grounds raised by the applicant in the application could have been raised in the written statement also and can

not be decided at preliminary stage if it does not involve mixed question of law and fact.

5. The Supreme Court in the case of R.K. Roja v. U. S. Rayudu and Anr (2016) 14 SCC 275, has observed in paragraph 5 and 20 as under :-

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or

sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore,

the defendant is entitled to file the application for rejection before filing his written statement thereafter (see Saleem Bhai v. State of Maharashtra,

MANU/SC/1185/2002 : (2203) 1 SCC 557. But once an application for rejection is filed, the court has to dispose of the same before proceeding with

the trial. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable v. Charity Commr., MANU/SC/0071/2004 : (2204) 3 SCC 137 (SCC pp.

20.Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself,

irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objection can be raised, and

also does not say in express terms about the filing of a written statement. Instead, the word ""shall"" is used, clearly implying thereby that it casts a duty

on the court to perform its obligation in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even

without intervention of the defendant.

6. In view of the above stated legal position the finding of trial Court that Æ, the application under Order 7 Rule 11 C.P.C. has to wait till filing of

written statement is closed runs contrary to the decision rendered in the matter of R.K. Roja (supra) deserves to be set aside. The trial Court is

directed to consider and dispose of the said application on its own merits and in accordance with law.

7. The writ petition is allowed to the extent indicated herein above.