

Lh Of Patel Naranbhai Karmasibhai & Ors. Versus Vs Lh Of Harijan Dahyabhai Bhударbhai & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Code of Civil Procedure, 1908 " Section 115, Order 7, Rule 11, Order 7, Rule 11(a), Order 7, Rule 11(d)

Specific Relief Act, 1963 " Section 34, 38

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: Narendra Ranamalji Madhu, Abhishek D Jain, H J Karathiya, Nisarg D Shah

Final Decision: Dismissed

Judgement

Divyesh A. Joshi, J

1. By filing present Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC" for

short), the applicants have challenge the order dated 06.08.2022 passed below application, Exh.15 by the learned Additional Senior Civil Judge, Tharad

in Regular Civil Suit No.46 of 2019, whereby the application, Exh.15 preferred by the applicant under Order 7, Rule 11(d) of the CPC came to be

rejected.

2. Heard learned advocate, Mr. Abhishek Jain for the applicants and learned advocate, Mr. H.J. Karathiya for the respondents.

3. Learned advocate submitted that the applicants herein are the original defendants in the suit preferred by the respondents herein, who are the

original plaintiffs being Regular Civil Suit No.46/2019 before the court of learned Principal Civil Judge, Tharad inter alia praying for declaration as well

as permanent injunction under Sections 34 and 38 of the Specific Relief Act, wherein the notice was issued and in pursuance thereto, the applicants

appeared through their advocate and filed an application under Order 7, Rule 11(a) and (d) of the CPC, however, the said application had not been

entertained by the learned Judge concerned and being aggrieved by the said order, the present civil revision application has been preferred.

4. Learned advocate submitted that in fact, it is settled proposition of law that at the time of deciding the application preferred under Order 7, Rule 11

of the CPC, the Hon'ble Court has to consider the plaint as well as material supplied by the plaintiffs along with the suit. Learned advocate

submitted that it is an admitted position of fact that the forefather of the plaintiffs had entrusted the said property to the forefather of the defendants

by executing the mortgaged-deed in the year 1971 and, thereafter subsequently in the year 1985-86, the application was preferred before the revenue

authority for the release of mortgaged-deed executed between the parties, however, the said application had not been entertained then in the year

2016, revenue proceedings have been initiated by the parties against each other and the said litigation had reached upto the learned Special Secretary

(Revenue Department) and, thereafter in the year 2019, the present suit is filed by the original plaintiffs for the reliefs as prayed for in the plaint.

Learned advocate submitted that therefore bare perusal of the pleadings of the suit clearly goes on to show that for the mortgage-deed executed

between the forefather of the plaintiffs and the defendants in the year 1971, entry to that effect is also mutated in the revenue record and since then,

from the date of said mortgage-deed, the property is being enjoyed by the defendants and the said fact is well within the knowledge of the plaintiffs,

despite that, the suit is preferred in the year 2019, therefore, the suit is hopelessly time barred and as per Articles 58 and 59 of the Limitation Act, the

suit was required to be instituted within a period of three years from the date of knowledge about execution of the deed and for the purpose of release

of the mortgage-deed, the suit is required to be preferred within a period of 30 years but the suit is preferred after lapse of so many years, which

clearly goes on to show that the suit is time barred and, therefore, the application preferred under Order 7, Rule 11 ought to have been entertained.

5. Learned advocate submitted that the cause of action accrued to institute the suit is mentioned in the suit clearly goes on to show that on 29.08.2016,

the respondents had gone to the office of Sub-Registrar and had come to know about the entry mutated in the revenue record and they have also

instituted revenue proceedings before the revenue authority in the year 2016, therefore immediately within a period of three years, the suit was

required to be filed, however, it was not filed. He submitted that if the Hon'ble Court would make a cursory glance upon the plaint, in that event, it

would be found out that the suit had been admitted on 14.11.2019, therefore, even for the sake of arguments without admitting it, the cause of action

for filing suit is mentioned in the suit clearly goes on to show that they had come to know about the entry mutated in the revenue record on 29.08.2016,

in that event, as per the provision of the Limitation Act, within a period of three years i.e. on or before 28.08.2019, the suit ought to have been filed,

whereas the suit has been preferred on 14.11.2019 and only on those count, the suit is bad by law of limitation and is required to be dismissed.

6. Learned advocate submitted that therefore, an application under Order 7, Rule 11 of the CPC was filed but it was not entertained by assigning

reasons that the mortgage-deed is usufructuary, therefore, law of limitation would not be applicable in those cases and suit for release of mortgage-

deed can be entertained at any given point of time. Learned advocate submitted that along with the suit, certain revenue entries were also placed and

if the Hon'ble Court would make cursory glance upon the record of the year 1974, it clearly goes on to show that the entry mutated in the revenue

record is also certified on 29.06.1974.

7. Learned advocate at this stage has placed reliance upon following decisions,

(1) the judgment of the Hon'ble Supreme Court in case of C.S. Ramaswamy Vs. V.K. Senthil & Ors., reported in 2022 (14) Scale 443;

(2) the judgment of the Hon'ble Supreme Court in case of N.V. Srinivasa Murthy & Ors. Vs. Mariamma (dead) by Proposed Lrs & Ors.,

reported in (2005) 5 SCC 548;

(3) the judgment of this Hon'ble Court in case of Emerald Cooperative Housing Society Ltd. Vs. Gulamkadar & Ors., reported in 2019 (2) GLH

559;

(4) judgment of this Hon'ble Court delivered in Civil Revision Application No.343/2019 in case of Rajhans Infrancon (I) Pvt. Ltd. Vs. Santosh

Rameshbhai Rathod;

(5) judgment of this Hon'ble Court delivered in Civil Revision Application No.480/2015 in case of Johnbhai Gidhiyonbhai Cristian Vs. Wilsonbhai

Somchandbhai Thakore;

(6) judgment of this Hon'ble Court delivered in First Appeal No.1095/2016 in case of Mohanbhai Maganbhai Patel & Ors. Vs. Miral Vallabhbbhai

Surani & Anr.;

8. Referring to the ratio enunciated in the aforesaid decisions of the Hon'ble Supreme Court, it is submitted that the case of the applicants is

squarely covered by those decisions, therefore, the present civil revision application may be allowed as prayed for.

9. On the other hand, learned advocate, Mr. H.J. Karathiya appearing for the respondents " original plaintiffs, has objected the present civil revision

application with a vehemence and submitted that the impugned judgment and order passed by the learned Judge concerned is just, fair and reasonable,

which does not require any interference at the hands of this Hon'ble Court. He submitted that in fact, the original defendants have tried to enter

into the suit premises and dispossess the original plaintiffs by using force, therefore, they were constrained to institute suit before the learned civil court

and along with the suit, an application for injunction was also preferred. He submitted that in fact, revenue proceedings have been instituted by the

original plaintiffs before the competent revenue authority and in those proceedings, to bring correct facts on record, they have preferred an application

to the Public Information Officer, Sub Registrar, Tharad and the sought certain information on 01.09.2016, however, the said application had not been

entertained by the office of the Sub-Registrar, Tharad, therefore, the original plaintiffs have preferred an application to the revenue authority and on

the basis of the said application, an inquiry was carried out by the office of the Additional Collector, Tharad and they have sought certain information

from the office at the relevant point of time and the Sub-Registrar, Tharad had forwarded the documents to the learned Deputy Collector, Tharad on

15.05.2017 along with the copy of index prepared by the office on the basis of mortgage-deed executed by and between the forefathers of the

plaintiffs and the defendants and as soon as the original plaintiffs have received those documents, they have immediately instituted suit before the

court and if the Hon'ble Court would make cursory glance upon the recital of the said documents, in that event, it is found out that the said

property had been mortgaged by Harijan Dahya Bhudar in favour of Naran Karamsi Patel on 07.04.1971 and the said document was entered into the

revenue record by mutating entry on 17.05.1971 and property is of Survey No.120 admeasuring 14 Acre 16 Guntha for Rs.2,000/-. He further

submitted that in fact, as per the recital of the original entry mutated in the revenue record, Survey No.120 is mortgaged by forefather of the plaintiffs

by receiving an amount of Rs.2000/- from the forefather of the defendants, whereas the present suit is filed for Survey No.104 admeasuring 14 Acre

4 Guntha and along with the suit, an application is also preferred by the original plaintiffs to measure the area of the disputed property and also

prepared panchnama as well as map. He submitted that at the time of execution of the Court Commission, the Court Commissioner has personally

gone to the disputed place and prepared a map and if the Hon'ble Court would make a cursory glance upon the said map, in that event, it would be

found out that in Survey No.104, pakka house is constructed, wherein the original plaintiffs are residing since last many years and cultivating the said

land. He submitted that in fact, at the time of executing the mortgaged deed, the property of Survey No.120 was mortgaged with the forefather of the

defendants and since then, they are using and cultivating the said property, whereas the original plaintiffs are owner and in occupation of the property

being Survey No.104 since their beginning and at the time of registration of registered mortgaged deed executed by the parties in the office of the Sub

Registrar, correct facts about the description of the property is mentioned, whereas at the time of mutating the entry in the revenue record, false and

fabricate documents had been supplied by the forefather of the defendants, wherein they have manipulated survey numbers as mentioned in the

mortgaged deed and by changing survey No.120 to Survey No.104, entry was also mutated to that effect in the revenue record. He submitted that the

plaintiffs were not aware about the said fact but recently on the basis of certain information shared by the office of the Sub Registrar, Tharad, they

have come to know about the said fact and recently the defendants have tried to dispossess them under the guise of mutation of their name in the

revenue record, which led to filing of the suit. He submitted that suit is not filed only for the declaration and title but further relief is also claimed in

addition to declaration and in that event, the relief of declaration would only be ancillary one and for the purpose of limitation, it would be governed by

the relief, that has been additionally claimed. He submitted that further relief claimed in the suit is for the recovery of the possession based upon the

title and said limitation would be 12 years in terms of Article 65 of Schedule to the Limitation Act. He submitted that in fact, the suit for a declaration

of title to immovable property would not be barred so long as the right to such a property continues and subsists and when such right continues to

subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit and the principle is that the suit for a

declaration for a right cannot be held to be barred so long as right to property subsist. He submitted that the said view is adopted by the Hon'ble

Supreme Court in case of C. Mohammad Yunus Vs. Syed Unnissa & Ors., reported in AIR 1961 SC 808. He submitted that in fact, in the present

case on hand, the original defendants had admitted that on the date of institution of the suit, the plaintiffs are in possession of the suit property and by

manipulating the entry, more particularly, revenue record, the parties have tried to mislead the authority and have tried to enter into the property under

the guise of entry mutated in the revenue record and as soon as the said fact came to the notice of the plaintiffs, immediately within a period of three

years, suit had been instituted and admittedly, the trial court after giving full opportunity of leading evidence to both the parties, passed impugned order

on the application preferred under Order 7, Rule 11 of the CPC. He submitted that here in this case on hand, there is a chequered history because the

plaintiffs have come with specific case that the original defendants have tried to mislead the Government authority and manipulated the entries but at

the time of submission of the documents before the revenue authorities, the property mentioned in the mortgage-deed is quite different and, therefore

without leading evidence, those facts cannot be proved at this juncture. It is, therefore, urged that the present application may not be entertained.

10. Learned advocate, at this stage, has put reliance upon following decisions,

(1) the judgment of the Hon'ble Supreme Court in case of N. Thajudeen Vs. Tamil Nadu Khadi & Village Industries Board, reported in 2024 (0)

INSC 817;

(2) the judgment of the Hon'ble Supreme Court in case of Urvashiben Vs. Krishnakant Manuprasad Trivedi, reported in (2019) 13 SCC 372;

(3) the judgment of the Hon'ble Supreme Court in case of Mohd. Ali Saraf Vs. Jasabhai Lakhabhai Bharwad, reported in 2018 JX (Guj) 295;

(4) the judgment of the Hon'ble Supreme Court in case of Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar, reported in (2018) 6 SCC 422;

11. Referring to the ratio enunciated in the aforesaid decisions coupled with the facts of the case, the learned advocate has urged that the present Civil

Revision Application may be dismissed upholding the impugned order.

12. In view of the rival submissions canvassed by learned advocates for the parties and having considered the documents produced on record

including the impugned order delivered by the learned Judge concerned, the question, which would fall for consideration of this Hon'ble Court is as

to whether it is permissible for Court to look into evidence or consider disputed question of fact or law, for arriving at the conclusion that the suit is

barred by any law?

13. It is pertinent to mention at this stage that plea of rejection of plaint is plea of demurer and it allows defendant to scuttle suit at threshold without

examining merits. Needless to say that when Court is called to decide the rejection of the plaint under Order 7, Rule 11 of the CPC, only averments

made in the plaint requires to be read and no defence can be seen pleaded either in written statement or application filed under Order 7 Rule 11 of the

CPC. The Court has to accept that pleadings of the plaintiff is germane, so far as decision on Order 7 Rule 11 of CPC is concerned and if it is found

that statement made in the plaint is barred by any provision of law, the Court can reject the plaint. However on a plain reading of the plaint along with

the documents annexed therewith, I am of the considered opinion that no such finding can be rendered at this stage unless appropriate issue is framed

and evidence is led in respect of the applicability of the relevant Articles as canvassed by the parties. Over and above that, it is required to be

mentioned that in an application under Order 7, Rule 11(d) of CPC, this Court cannot adjudicate such an issue on the basis of bare averments in the

plaint.

14. It is found out from the submissions canvassed by learned advocates for the parties as well as the material available on record that the dispute

pertains to land bearing Survey No.257 (Old Survey No.104 pk.3) admeasuring 2-36-62 Sq.Mtrs. situated in the sim of Village : Chudmer, Taluka :

Tharad, District : Banaskantha, which is known as "Madevdhoro" and the said property had been mortgaged by Harijan Dahya Bhudar in favour

of Naran Karamsi Patel on 07.04.1971 and the said document was entered into the revenue record by mutating entry on 17.05.1971. Thereafter when

the inquiry was made from the revenue authority, the original plaintiffs came to know about mischief played by the original defendants and after

collecting documents, the suit came to be preferred before the learned Civil Court inter alia praying for declaration as well as permanent injunction

under Sections 34 and 38 of the Specific Relief Act, wherein the notice was issued upon the original defendants, which was eventually served upon

them and, thereafter, they have submitted an application under Order 7, Rule 11 of the CPC for rejection of plaint, which was rejected, against which,

present revision application is preferred.

15. The submissions have been made by learned advocate for the applicants to the effect that the suit is hopeless time barred and it ought to have

been rejected by the learned Judge concerned under Order 7, Rule 11 of the CPC. Therefore to consider the above submissions, it would be fruitful to

reproduce the provision of the Order 7, Rule 11 CPC reads,

11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be

fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being

required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;] [(f) where the plaintiff fails to comply with the provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended

unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from

correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to

extend such time would cause grave injustice to the plaintiff.]

(emphasis supplied)

16. Thus from the above provision, it is found out that the provision of the Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected ""where

the suit appears from the statement in the plaint to be barred by any law"". Further as can be seen from the aforesaid provisions, there are different

clauses in Order 7 Rule 11, which should not be mixed up while deciding such issue. Therefore in order to decide as to whether the suit is barred by

any law or not, it is the statement in the plaint which will have to be construed and while deciding such an application, the Court concerned must have

due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not

open to decide the issue on the basis of any other material including the written statement in the case.

17. Considering the above provision, if the facts of the present case, as discussed hereinabove, are examined, in that event, it would be found out that

as soon as the respondents herein came to know about the revenue record, they have submitted an application before the revenue authority for the

release of mortgaged-deed executed between the parties, however, the said application had not been entertained, however thereafter, they have

preferred an application to the Public Information Officer, Sub Registrar, Tharad and sought certain information on 01.09.2016, however, the said

application had not been entertained by the office of the Sub-Registrar, Tharad, therefore, the original plaintiffs have preferred an application to the

revenue authority and on the basis of the said application, an inquiry was carried out by the office of the Additional Collector, Tharad and they have

sought certain information from the office at the relevant point of time and the Sub-Registrar, Tharad had forwarded the documents to the learned

Deputy Collector, Tharad on 15.05.2017 along with the copy of index prepared by the office on the basis of mortgage-deed executed by and between

the forefathers of the plaintiffs and the defendants and thus admittedly on 15.05.2017, they came to know about the actual position and thus, the period

of three years would start to commence from the said date and admittedly in the year 2019, the suit has been filed for the reliefs as prayed for in the

plaint, which in my considered opinion cannot be said to be filed beyond a period of three years. However, it can be said to be mix question of facts

and law and that can be decided at the time of deciding the suit. It is required to be noted that the averment made in the plaint appears to be candid

and does not intend to camouflage the intention of the plaintiffs to circumvent Order 7 Rule 11 of the CPC. The averment made in the plaint on close

introspection does not indicate a bogus or a frivolous litigation or an illusory drafting to obviate the obstacle of Order 7 Rule 11 of the CPC. The

application filed under Order 7, Rule 11 of the CPC appears to have been done as a matter of course as the averments made in the same suggest.

18. Further, when limitation is a pure question of law and from the pleadings itself, it becomes apparent that a suit is barred by limitation, in that event,

of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in the present case on hand, where the

issue of question of limitation is a mixed question of fact and law as number of issues are connected with each other and the suit does not appear to be

barred by law of limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. The said

view has been taken by the Hon'ble Supreme Court in case of Narne Rama Murthy Vs. Ravula Somasundaram, reported in 2005 (6) SCC 614.

19. At this stage, I would like to refer to the decision of the Hon'ble Supreme Court in case of N. Thajudeen (supra), wherein the Hon'ble

Supreme Court has considered the decision of the Hon'ble Supreme Court in case of C. Mohammad Yunus (supra) and observed in Paragraph

No.23 as under,

“23. In C. Mohammad Yunus vs. Syed Unnissa And Ors, AIR 1961 SC 808, it has been laid down that in a suit for declaration with a

further relief, the limitation would be governed by the Article governing the suit for such further relief. In fact, a suit for a declaration of

title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to

subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit. The principle is that the suit

for a declaration for a right cannot be held to be barred so long as Right to Property subsist.”

20. Considering the legal principles as enunciated by various judgments, in an application under Order 7, Rule 11 of CPC, the Court has to only

examine whether the plaint and the contents of the documents are such that there is no scope for the parties to go to trial on the claims made by the

original plaintiffs and that the plaint deserves to be rejected at the threshold. It would necessarily will have to be analyzed as to whether in the facts

and circumstances of the present case and considering the pleadings in the plaint as well as documents annexed thereto whether the present suit

would be covered under the provisions of Articles 58 and 59 of the Limitation Act. There is a patent ambiguity which gives rise to the necessity for

leading of evidence in the present case which requires a full trial by assigning opportunity to the parties to lead evidence. At this stage, no emphatic

finding can be rendered as to whether the suit will be covered under the provisions of Articles 58 and 59 of the Limitation Act. The plaint cannot be

rejected on the ground that it is barred by limitation on the face of it. The question as raised by the applicant will have to be answered after giving an

opportunity to the parties to lead evidence as it is found to be a mixed question of law and facts. The judgments relied upon by the learned counsel for

the applicants will not come to the aid of the applicants in view of the aforesaid observations. The rest of the contentions as raised by the applicants

herein along with the judgments relied upon are more and less in the nature of opposition to the suit and by way of reply to the averments and the

same cannot be taken into consideration at this stage.

21. At this stage, it is required to be mentioned that Section 115 of the CPC has been amended on the recommendation of the Malimath Committee

and the extent of the intervention and other revisional jurisdiction has been curtailed. In case of Vidyodaya Trust and Ors. Vs. Mohan Prasad R &

Ors., reported in (2006) 7 SCC 452, the Hon'ble Apex Court, examined the scope and ambit of Section 115 of the CPC in Paragraph Nos.8 and 9,

which read as under :

“8. For appreciating rival stands, the scope and ambit of Section 115 CPC needs to be examined.

115 Revision.

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which

no appeal lies thereto, and if such subordinate Court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make each order in the case as

in thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of

a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally

disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court

or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed

by the High Court.

Explanation. In this section, the expression ""any case which has been decided"" includes any order made, or any order deciding an issue, in

the course of a suit or other proceeding.

9. The amendment to Section 115 of the CPC is based on the recommendations made by the Malimath Committee. The said Committee was of

the opinion that the expression employed in Section 115 of the CPC, which enables interference in revision on the ground that the order if

allowed to stand would occasion a failure of justice or cause irreparable injury to the parties against whom it was made, left open wide

scope for exercise of powers with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of

cases. The Committee did not favour denuding the High Court of the power of revision, but strongly felt that the powers should be suitably

curtailed. The effect of the erstwhile clause (b) of the proviso was deleted and a new proviso has been inserted so that the revisional

jurisdiction is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied. It is

thus clear that the proviso creates an embargo in exercise of revisional power.

22. This being a revision application under Section 115 of the CPC, looking to the scope which has been spelt out by series of decisions, even if

another view is possible, in the absence of any contingencies which are reflecting in Section 115 of the CPC, even substitution of view is

impermissible. Hence, in absence of any jurisdictional error, this Court is unable to accept the revision application and such decisions delivered by

Hon'ble Apex Court deserve a reference while disposing of the present revision, which are reported in (2017) 13 SCC 409 more particularly

Paragraph No.15 and (2016) 12 SCC 544 more particularly Paragraph No.19.

23. The Court has also gone through the decisions relied upon by the learned advocate for the applicant. There cannot be any dispute with regard to

the ratio laid down in the same. However, those decisions are not possible to be applied as a straight jacket formula since the contentions raised by

learned advocate for the applicant relying upon those decisions are forming part of the defense of the applicant, which will have to be examined at the

end of trial of the suit. Further in the facts and circumstances of the case on hand and this being discretionary relief, which requires to be granted

judiciously, the said decisions would be of no help to the present applicant at this juncture.

24. I have considered the findings given and conclusion arrived at by the learned trial court while passing impugned order and found that the learned

trial court has given cogent reasons and findings for rejection of the application under Order 7, Rule 11 of the CPC. The learned trial court has

dealt with all the submissions and contentions as raised by the parties. The learned trial court has also properly appreciated the law as laid down by the

Honble Supreme Court through various judgments as relied upon by the parties to the lis.

25. The law on the subject of Order 7 Rule 11 of the CPC is time and again reiterated by several decisions of Hon'ble Apex Court propounding that at

this stage, the defences cannot be examined nor the written statement and the contentions be considered. A plain reading of the averments contained

in the plaint itself to be a yardstick to take a decision on Order 7 Rule 11 application. Keeping this proposition of law in mind, the aforesaid

circumstances are clearly indicating that these defenses now put up in revision application by learned advocate appearing for the applicant are not

possible to be examined particularly when the same appear to have not been raised in the court below as well. Hence, the order in question reflects no

irregularity nor any illegality material in nature, hence, the order appears to be just and proper. The overall circumstances which are reflecting on the

record clearly indicate that this is not a case in which in peculiar set of circumstances plaint to be rejected.

26. In view of the aforesaid observations, the present Civil Revision Application is devoid of merits and is dismissed accordingly. Notice is discharged.

Interim relief granted earlier stands vacated forthwith. No order as to costs.

27. Connected civil application stands rejected accordingly.