

Ranveer Singh and Another Vs. Additional District and Sessions Judge and Others

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Court : Rajasthan

Decided On : May-23-2011

Judge : Mahesh Bhagwati, J.

Acts : Code of Civil Procedure (CPC) (C.P.C) - Order 7 Rule 11; [Constitution of India](#) - Article 227

Appeal No. : Case No. CW - 6790 of 2011

Appellant : Ranveer Singh and Another

Respondent : Additional District and Sessions Judge and Others

Judgement :

1. By way of the instant writ petition, the petitioners have beseeched to quash and set-aside the order dated 28th May, 2009, whereby the learned Additional District Judge (Fast Track) No.3 Ajmer Camp Kishangarh, dismissed the application filed by the defendants-petitioners under Order 7 Rule 11 CPC.

2. Having heard the learned counsel for the petitioner it is noticed that earlier on 21.9.2007, an application under Order 7 Rule 11 was filed by the petitioners-defendants raising objection with regard to jurisdiction of the court, which was dismissed by the learned trial court vide order dated 30.5.2008. Thereafter the defendant-petitioner again moved the application under Order 7 Rule 11 of CPC

raising the same objection, which was found by the learned trial court to have been moved with a view to procrastinate the trial of the suit and dismissed the same.

3. The Hon'ble Apex Court in plethora of cases has consistently held that the jurisdiction under Article 227 of the Constitution must be sparingly exercised to correct errors of jurisdiction and the like, but not to upset pure findings of fact. The Hon'ble Apex Court has also held that the High Court should not interfere with the order of the inferior court, unless the same is found to be perverse or not based on any material or it results in manifesting injustice.

4. In the case of Popat and Kotecha Property Versus State Bank of India Staff Association reported in 2005 (2) Western Law Cases (supreme Court) Civil page 588, the Hon'ble Apex Court has held thus:

“10. Clause (d) of Order VII Rule 11 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

5. In Saleem Bhai and Others Versus State of Maharashtra and others reported in 2003 (1) SCC 557, the Hon'ble Apex Court has held with reference to Order VII Rule 11 of the Code that “the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial court can exercise the power 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. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.”

6. The crux of aforesaid judgments is that the disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 of CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force. The learned trial court is found to have un-erringly dismissed the application filed by the defendant-petitioners under Order 7 Rule 11 of CPC .

7. The impugned order is found to be perfectly just and proper. There does not seem to be any perversity in the impugned order nor is it found to be contrary to the provisions of law. In view thereof, this Court does not find any ground to interfere with the impugned order passed by the learned court below and the writ petition being devoid of any substance deserves to be dismissed.

8. For the reasons stated above, the writ petition fails and the same being bereft of any merit deserves to be dismissed, which stands dismissed.

9. Consequent upon the dismissal of writ petition the stay application, filed therewith, does not survive and that also stands dismissed.

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