

Smt. Mohri Devi Vs. Smt. Chuki Devi and Another

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Court : Rajasthan

Decided On : Nov-18-2011

Reported in : 2012AIR(NOC)198

Judge : Mahesh Bhagwati

Appeal No. : S.B. Civil Writ Petition No. 12434 of 2011 & S.B. Civil Misc. Stay Appl. No. 11405 of 2011

Appellant : Smt. Mohri Devi

Respondent : Smt. Chuki Devi and Another

Judgement :

1. By way of the instant writ petition, the petitioner has beseeched to quash and set aside the order dated 31st May, 2011, whereby the Additional Civil Judge (Sr.Div.), Sikar, dismissed the application of the petitioner-defendant, filed under Order 7 Rule 11 of CPC.
2. Heard the learned counsel for the petitioner and carefully perused the relevant material on record.
3. The facts of the case, in brief, are that the respondent No.1-Smt. Chuki Devi filed an election petition under Rule 80 of the Rajasthan Panchayat Election Rules, 1994 and Section 43 of the Panchayat Raj Act, 1994, against the petitioner and certain other persons, challenging the election for the post of Sarpanch of Gram

Panchayat Harsh. The reply to the election petition was filed by the petitioner-defendant wherein numerous legal objections were raised. The petitioner-defendant implored the Court that in view of the legal objections, the election petition should be rejected under Order 7 Rule 11 of CPC.

4. Learned counsel further canvassed that an application under Order 7 Rule 11 of CPC can be filed at any stage before the conclusion of the trial of the suit. He has cited the following judgments in support thereof.

1. Saleem Bhai and Ors. Vs. State of Maharashtra and Ors. reported in (2003)1 SCC, 557.

2. Smt. Manju Sharma Vs. Suji Sharma and Anr. reported in WLC 1996(3) 161.

5. Having reflected over the submissions made by the learned counsel for the petitioner and carefully perused the impugned order, it is noticed that the learned trial Court dismissed the said application observing that the legal objections shall be decided while adjudicating the suit, after settling the issues.

6. At the very outset, it is relevant to record that the Hon'ble Apex Court has consistently held in plethora of cases that the extraordinary jurisdiction under Article 227 of the Constitution should be sparingly exercised to correct the error of the jurisdiction and the law but not to upset the pure findings of fact. The Hon'ble Apex Court has also held that the High Court should not interfere with the order of the learned trial Court, unless the same is found to be perverse or contrary to material or it results in manifesting injustice.

7. 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 thereunder 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.”

8. The crux of aforesaid judgment is that the disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 of CPC. The learned trial court is found to have un-erringly dismissed the application filed by the defendant-petitioner under Order 7 Rule 11 (D) of CPC .

9. Otherwise too, the power to reject the plaint under Order 7 Rule 11 CPC is conferred on the court and not on the party. Thus, it is the Court alone, which can exercise the power to reject the plaint under Order 7 Rule 11 CPC. Rule 11 deals with the rejection of the plaint, which reads thus:

“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 written 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 for 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.”

10. When a plaint is presented by the plaintiff in the Court, it is for the Court to pass an order with regard to the registration of plaint on the report of Munsarim or Reader of the Court, as the case may be.

11. Rule 32 of General Rule (Civil), 1986 reads thus:

“A Munsarim or Reader of a Civil Court appointed to receive plaints, shall examine each plaint presented to him, and shall report thereon whether the provisions of the Code and Court Fees Act have been observed and whether the claim is within the jurisdiction of the Court, constitutes a cause of action, and has been presented within the period prescribed for the institution of such a suit.

The Munsarim or Reader shall see that the actual date of presentation of the plaint is entered upon the impressed stamp and adhesive label, if any, below the date of purchase endorsed on them.

On the back of all plaints, the Munsarim or Reader shall note

- (a) date and time of presentation of the plaint;
- (b) name of presenter;
- (c) classification of suit, and
- (d) court fees paid.”

12. Thus, from a bare perusal of the language of Rule 32 of General Rules (Civil), 1986 and Rule 11 of Order 7 CPC, it is found that the court has to see as to whether plaint discloses any cause of action; it is sufficiently stamped; and has been presented within time prescribed for the institution of such a suit. If the plaint does not constitute a cause of action or it is insufficiently stamped or it is barred by law, then in that case, on the basis of report of the Munsrim or Reader, as the case may be, the Court shall reject the plaint invoking the powers under Rule 11 of Order 7 CPC. The Court is not required to pass an order under Order 7 Rule 11 CPC at the behest of the defendant when an application is filed under this provision by the defendant in this regard. The power to attract the provisions of Order 7 Rule 11 CPC is not conferred on the party to the suit. On the contrary, it is

the bounden duty of every Court to obtain the report of the Munsarim or Reader of the Court, as the case may be, and thereafter if the contents of the plaint constitute a cause of action; it is sufficiently stamped and it is not barred by law, the Court shall order to register the plaint and if it does not disclose any cause of action or it is insufficiently stamped or it is barred by law, then without there being any prayer of the defendant, the Court is duty bound to reject the plaint suo-moto. Thus, the power to attract the provisions of Order 7 Rule 11 CPC is not conferred on the party, but it is conferred on the Court and it is the Court alone, which can exercise the powers to reject the plaint under Order 7 Rule 11 CPC. If viewed from this angle, it can safely be inferred that the petitioner-defendant had no right to file the application under Order 7 Rule 11 CPC imploring the Court to reject the plaint and the application was not maintainable.

13. Learned counsel for the petitioner has while placing reliance on the case of Saleem Bhai and Ors.(Supra) contended that the application under Order 7 Rule 11 of CPC can be filed at any stage in the suit, before the conclusion of the trial.

14. Having gone through the judgment of Saleem Bhai and Ors. (Supra), it is found that the Hon'ble Apex Court held in this case that "the trial Court can exercise the power under Order 7 Rule 11 CPC 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.

15. Adverting to the facts of the instant case, it is noticed that the petitioner-defendant had already filed the written statement of defence and thereafter while invoking the provisions of Order 7 Rule 11 of CPC, filed the application imploring that the respondent No.1 utterly failed to comply with the mandatory provisions of Rajasthan Panchayat Act and since the mandatory provisions were not complied with, the election petition deserves to be dismissed.

16. The facts of this case are clearly distinguishable from the facts of the Saleem Bhai's case. In the case of Saleem Bhai and Ors.(Supra), the learned trial Court directed the defendant to file the written statement of defence sans deciding the application filed under Order 7 Rule 11 of CPC. The Hon'ble Apex Court held that the trial Court first ought to have decided the application under Order 7 Rule 11 of

CPC and thereafter should have issued the directions to file the written statement of defence. In the instant case, the written statement had already been filed by the petitioner-defendant and thereafter the application filed under Order 7 Rule 11 of CPC was dismissed. Secondly, a bare perusal of the application shows that neither the petitioner-defendant raised the issue of cause of action that it was prima facie not made out in favour of the respondent No.1-plaintiff, nor it was mentioned in the application as to how the election petition was barred by law.? A bare statement sans particulars of the election petition being barred by law, does not invoke the provisions of sub-clauses (d) of Rule 11 of Order 7 CPC. Firstly, the petitioner-defendant is expected to come out with a tangible case as to how the petition was barred by law? Secondly, he has to make it clear that how did the cause of action not arise in the election petition?. So far as the question of raising the legal objections are concerned, the learned trial Court is found to have rightly observed that they shall be decided after settling the issues based on pleadings of both the parties. From no stretch of imagination, it can be said that the learned trial court has erred in dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 of CPC. Learned counsel for the petitioner has utterly failed to convince this Court to take a contrary view to that of the view taken by the learned trial Court.

17. To conclude, the impugned order is found to be 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 filed by the petitioner being devoid of any substance deserves to be dismissed.

18. For these reasons, the writ petition fails and the same being bereft of any merit stands dismissed in limine.

19. Consequent upon the dismissal of the writ petition, the stay application does not survive and the same also stands dismissed.