

RAJASTHAN HIGH COURT

Loona Ram

Vs.

Rameshwar Lal

S.B. Civil Revision Petition No. 149 of 2009
(Gopal Krishan Vyas, J.)

01.05.2009

JUDGMENT

Gopal Krishan Vyas, J.

1. Instant revision petition has been filed challenging the judgment and order dated 27.03.2009 passed by the Addl. District Judge No. 1, Bikaner in Original Suit No. 109/2009, whereby, the application filed under Order 7 Rule 11, C.P.C. by the petitioner-defendant was rejected.
2. According to facts of the case, a civil suit was filed by respondent- plaintiff for specific performance for agreement to sale for purchase of the property belonging to the petitioner. In the plaint, it is alleged by the respondent-plaintiff that agreement to sell was made between the parties for sale of the house in question measuring 191.25 Sq. Yd. Situated at Gangashahar, Bikaner, for which, he paid a sum of Rs. 65,000/- on 25.02.2006 and further sum of Rs. 7,35,000/- on 25.03.2006; but, the petitioner-defendant did not execute the registered sale-deed in his favor, therefore, the suit may be decreed and petitioner-defendant may be directed to execute the registered sale-deed in his favor.
3. A written-statement was filed by the petitioner-defendant before the trial Court denying all the allegations leveled by the plaintiff and, specifically, it is pointed out that the plaintiff had played fraud upon the respondent inasmuch as the petitioner defendant had full faith in the plaintiff and he was also collecting rent on his behalf of the shops rented out in his premises. Further, it is stated that no amount or advance had subsequently been paid by the plaintiff to the defendant. There were talks going on in between the parties towards agreement to sale and it was specifically concluded

that since the tenants are not vacating the shops in the premises, it would not be feasible to finally conclude the agreement between the parties.

4. It is submitted in the written-statement further that on 02.03.2006, the plaintiff came to the defendant and submitted that he wanted to make payment of Rs. 7,35,000/- towards the agreement to sale in between the parties; but, when again the plaintiff was told that the tenants in the premises have refused to vacate the premises, on the same date, he agreed to cancel the agreement to sale and withdrew the amount deposited by him on the same date to the tune of Rs. ,35,000/-. It is pointed out that the contention of the petitioner can be fortified from the documents produced before the trial Court.

5. In the rejoinder, it is submitted by the petitioner that the above fact has been admitted in para 10 by the plaintiff that he has withdrawn the amount to the tune of Rs. 7,35,000/- on 02.03.2006, therefore, the suit for specific performance was not at all maintainable.

6. After filing rejoinder, in which, admission was made by the plaintiff- respondent that he withdrew the amount of Rs. 7,35,000/- on 02.03.2006, an application under Order 7 Rule 11, C.P.C. was filed by the defendant to reject the suit as the same is barred by law. However, the learned trial Court rejected the application filed by the petitioner-defendant vide impugned judgment and order on the ground that evidence is required to decide the matter.

7. Learned counsel for the petitioner submits that once it is admitted by the plaintiff-respondent that he has withdrawn the consideration amount deposited by him on 02.03.2006 which is in the tune of Rs. 7,35,000/-, then, this fact clearly shows that there was no cause of action remaining in the suit but the learned trial Court, ignoring the facts contained in the application filed under Order 7 Rule 11, C.P.C., rejected the application of the defendant-petitioner illegally. Learned counsel for the petitioner invited my attention towards judgments reported in *In the case of T. Arivandandam v. T.V. Satyapal & Another*; ¹ and, 2007 (4) Civil Court Cases 731 (SC), in the case of *Ram Prakash Gupta v. Rajiv Kumar Gupta & Others*.

8. While relying upon the cited cases, it is submitted by learned counsel for the petitioner that as per the verdict of the Hon'ble Supreme Court, the Court can exercise power at any stage of the suit which is even before registering the suit or after issuing summons or before the conclusion of the trial and, for the purpose of deciding application under Order 7 Rule 11, C.P.C., averments made in the plaint are germane.

9. I have considered the arguments advanced by learned counsel for the petitioner and perused the impugned order. I have also perused the judgments cited by learned counsel for the petitioner.

10. In my opinion, at the time of deciding application moved under Order 7 Rule 11, C.P.C., pleas taken by the defendant in the written-statement are wholly irrelevant at that stage. At the time of deciding the application, the whole plaint has to be read and if it discloses no cause of action, then, the plaint as a whole, or part of the plaint can be rejected. Here, in this case, the petitioner has filed application under Order 7 Rule 11, C.P.C. after filing rejoinder by the plaintiff-respondent. The learned trial Court, after perusing the pleadings of the averments of the plaint as well as reply and rejoinder, reached conclusion that the matter requires proper adjudication because, *prima facie*, case is made out from the plain reading of the plaint. In my opinion, the trial Court has not committed any error while rejecting the application filed by the petitioner because, upon perusal of the plaint, which is on record of this petition as Ex.-1, it speaks that the cause of action warranting adjudication by the Court is in existence. Therefore, the finding arrived at by the trial Court while rejecting the application filed by the petitioner under Order 7 Rule 11, C.P.C. does not require any interference. The judgments cited by learned counsel for the petitioner rest upon different set of facts and are, therefore, not applicable to the present case. There is thus no force in this revision petition.

Hence, this revision petition is hereby dismissed.

Petition dismissed.

Cases Referred.

1 (1977) 4 SCC 467