

(2022) 05 MP CK 0096
In the Madhya Pradesh High Court
Case No : Civil Revision No. 111 Of 2020

Anil Kumar Jain

APPELLANT

Vs

Maniram Singraha And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, 115, 149, 151, Order 7 Rule 11, Order 41 Rule 14(4)

Citation : (2022) 05 MP CK 0096

Hon'ble Judges : Dwarka Dhish Bansal, J

Bench : Single Bench

Advocate : Sidharth Sharma, R. P. Khare

Final Decision : Allowed

Judgement

Dwarka Dhish Bansal, J

1. Heard.

The applicant has filed this Civil Revision under Section 115 of CPC against the order dated 24.2.2020 passed by 21st Civil Judge, Class-I, Jabalpur in M.J.C. No.976/2019 rejecting his application filed under Section 151 of CPC holding that the same is not maintainable.

2. Order sheet dated 6.8.2019 of learned trial Court shows that respondent No.2 Smt. Sandhya Rani was not present when the suit was dismissed for want of payment of requisite Court fee, therefore, in view of order 41 Rule 14 (4) of CPC service of notice on her is not necessary.

3. Learned counsel for the applicant submits that he instituted a suit for specific performance of agreement of sale, on which Court fee of Rs.1,25,000/- (Rs.One Lakh Twenty Five Thousand) was required to be paid but due to non-payment of requisite Court fee the suit was dismissed vide order dated 6.8.2019 consequent upon dismissal of his application for taking the court fee on record filed under

Section 149 r/w Section 151 of CPC. He submits that the applicant instead of filing First Appeal against the order dated 6.8.2019, filed an application under Section 151 of CPC with a prayer to restore the Civil Suit and to permit the plaintiff to pay the court fee. Aforesaid prayer was opposed by the learned counsel for respondents/defendants No.3 and 4 by filing written reply and prayed for rejection of the application.

4. Learned counsel for the applicant submits that before learned trial Court in support of his contention he placed reliance on a decision in the case of Ajab Singh Vs. Amar Singh 2000 (1) MPWN 77 with the contention that even after dismissal of suit under Order 7 Rule 11 of CPC on the ground of non-payment of requisite court fee, the application under Section 151 of CPC can be filed for restoration of suit along with requisite Court fee but the learned Court below has on the basis of decision in the case of Smt. Triveni Devi Vs. Dr. J.P.Sharma, 1995 (2) MPWN 156 dismissed the application only on the ground of maintainability without properly considering the law laid down by this Court in the case of Ajab Singh (Supra) whereas the decision in the case of Smt. Triveni Devi (Supra) is not applicable at all to the facts of the present case. He submits that the case of Ajab Singh (Supra) was relied upon in the case of Pravesh Pathak and others Vs. Shakuntala Sharma and others reported in 2016

(1) MPLJ 358 and also in the case of Jagdeesh Vs. Narayan and another in M.P.No.1132/2017 decided on 22.2.2018, but the prayer of the applicant to take the requisite court fee on record, has been rejected by the impugned order dated 24.2.2020. In view of the aforesaid he submits that this revision be allowed and the plaintiff be permitted to pay the requisite court fee which is available with the plaintiff.

5. Learned counsel for respondent No.3 and 4 oppose the prayer made on behalf of the applicant contending that learned Court below has rightly rejected the application and there is no illegality in the impugned order.

6. Heard the learned counsel for the parties at length and perused the record.

7. Bare perusal of the impugned order dated 24.2.2022 shows that the application filed under Section 151 of CPC has been dismissed only on the ground of maintainability and previous order dated 6.8.2019 also shows that the suit was dismissed/rejected under Order 7 Rule 11 of CPC for want of payment of requisite Court fees.

8. In view of the law laid down by this Court in the case of Ajab Singh (Supra) wherein the decision in the case of Padmalaya Panda Vs. Masinath Mohanty AIR 1990 Orissa 102 (DB) was considered, which has also been relied on in the case of Pravesh Pathak and others Vs. Smt. Shakuntala Sharma and others, 2016 (1) MPLJ 358 and also in the case of Jagdeesh Vs. Narayan and another decided on 22.2.2018 in M.P.No.1132/2017, whereby the application under Section 151 of CPC was found to be maintainable despite the fact that order allowing the application under Order 7 Rule 11 of CPC is appealable like a decree under

Section 96 of CPC.

9. While considering the scope of Section 151 CPC, Division Bench of Orissa High Court has in para 4 held as under:

"4. The matter can be also approached from a different angle. The limitation for application of Section 151 of the Code has been precisely stated in the Full Bench decision of this Court reported in AIR 1980 Orissa 162 (E.I.D. Parry Ltd. v. M/s. Agro Sales and Service). Their Lordships have held that once a statutory provision has been made to cover a given field, application of inherent powers would stand regulated and in case statutory law covers the entire field, application of inherent powers would stand excluded. The Code no doubt makes a provision for appeal to a higher court against an order rejecting a plaint under Order 7, Rule 11, C.P.C. for non-payment of court fee, but there is no provision in the Code for redress in the very same Court. Thus the applicability of inherent powers of the court does not stand excluded. Our conclusion, therefore, is that the inherent powers of the court was available for restoration of the suit by setting aside the order of rejection of the plaint if sufficient cause is shown and the learned trial court having failed to exercise the said jurisdiction, the order is revisable."

10. This Court minutely considered the decision in the case of Triveni Devi (Supra), which has not considered the question of maintainability of the application filed under Section 151 of CPC for restoration of the suit, dismissed for want of payment of requisite court fee. Surprisingly, learned Court below has not followed binding precedent of this Court in the case of Ajab Singh (Supra) which has further been relied on in the later decisions in the case of Pravesh Pathak (Supra) and Jagdeesh (Supra).

11. From bare perusal of the impugned order, it is clear that learned Court below has not carefully considered both the decisions in the case of Ajab Singh (Supra) and Smt. Triveni Devi (Supra). Resultantly, the impugned order is not sustainable in view of aforesaid settled and concurrent view of this Court.

12. Consequently, this Civil Revision is hereby allowed with a direction to learned trial Court to restore the civil suit and if the applicant submits requisite court fee on the fixed date for that purpose before the trial Court then the same shall be taken on record. Failing which trial Court shall be at liberty to pass appropriate order in that regard. Parties are directed to remain present before the trial Court on 20.6.2022