

(2002) 09 AHC CK 0236

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37657/02/2/02

Brij Mohan Singh

APPELLANT

Vs

District Panchayat Raj Officer and Others

RESPONDENT

Date of Decision : 10-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 2
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 5 AWC 3541 : (2002) 93 RD 786 : (2003) 1 UPLBEC 36

Hon'ble Judges : S.K. Sen, C.J.; R.K. Agrawal, J

Bench : Division Bench

Advocate : Murtuza Ali and S.C. Verma, for the Appellant; Ran Vijay Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sen, C.J.—This petitioner first moved before the learned Single Judge as an application under Article 226 of the Constitution of India. The learned Single Judge felt that the application would lie under Article 227 of the Constitution of India. Accordingly, the matter came up before us today. However, we find that the prayers made in the writ petition cannot apply to an application under Article 227 of the Constitution of India. Be that as it may, the contention of the learned Counsel for the petitioner is that the order passed in civil suit on the basis of which the Panchayat Raj Officer has passed the impugned order is not proper in view of the fact that the civil suit itself is not maintainable and barred under the provisions of the U.P. Panchayatt Raj Act.

2. If the suit is not maintainable since it is barred under the specific statute, in our view there is adequate remedy under the CPC itself and proper course for the petitioner shall be to make an application before the Civil Judge for rejection of the plaint under Order VII, Rule 11(d) of the Code of Civil Procedure. The learned Counsel for the petitioner fairly conceded to the view taken by us in the matter and has submitted the proper course in such circumstances is to make an

application for rejection of the plaint under Order VII, Rule 1 I(d) of the CPC which is set out herein below :

"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."

3. It is clear from the aforesaid provision that if the suit is barred under any particular statute, it is open to the defendant to make application for rejection of the plaint. Since the petitioner is defendant in the suit, he shall be at liberty to make such application under Order VII, Rule 1 I(d), if he is so advised, before the Civil Judge concerned and in case such application is made it shall be disposed by the learned Civil Judge as early as possible after hearing the plaintiff and other defendants in accordance with law. It is made clear that we have not adjudicated the case upon merit and the learned Civil Judge shall be at liberty to proceed in accordance with law. The writ petition which has been treated as an application under Article 227 of the Constitution stands dismissed subject to the observations made above.