

(2023) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Revision Petition No. 77 Of 2023

Budha Ram

APPELLANT

Vs

Mahesh Kumar And Others

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11
Municipality Act, 2009 — Section 304(1)

Citation : (2023) 07 RAJ CK 0012

Hon'ble Judges : Rekha Borana, J

Bench : Single Bench

Advocate : C.P. Soni, Saritha Devi Soni

Final Decision : Dismissed

Judgement

Rekha Borana, J

1. The present revision petition has been preferred against the order dated 12.04.2023 passed by the Civil Judge, Merta, District Nagaur whereby the application under Order 7 Rule 11 of Code of Civil Procedure as preferred by the defendants had been dismissed.

2. The application under Order 7 Rule 11, CPC was preferred by the defendants with the submission that the suit against any Municipal authority could be preferred only after a notice of two months period was served in terms of Section 304(1) of the Municipality Act, 2009 (hereinafter referred to as 'the Act of 2009'). Further, that the notice in terms of Section 304(1) although had been served but the time period of two months had not expired and the present suit had been preferred prior to the expiry of the said period. Therefore, the same is not maintainable.

3. The application of the defendants had been rejected by the Court below on the ground that the relief as prayed for in the suit was simplicitor for injunction and therefore, the matter could not be governed by Section 304(1) of the Act of 2009.

4. A perusal of the reliefs as prayed for in the plaint makes it clear that the suit as preferred by the plaintiffs was not simplicitor for injunction but also for declaration therefore, rejection of the application under Order 7 Rule 11 by the Court below on the said ground cannot be affirmed.

5. However, it is clear on record that the objection of the non-service of the notices under Section 304(1) of the Act of 2009 has not been taken by the Municipal Board but by the private defendants and hence, the same cannot be maintainable.

6. As held in the judgment of Mohanlal vs. Jagdish Prasad Soni & Ors., 2020 (1) RLW 674 (Raj.), the right/obligation to notice can be waived by the party for whose benefit, it has been provided, which in terms of Act of 2009, is definitely the Municipal Board.

Admittedly, the objection has not been raised by the Municipal Board and in terms of law, the objection if any, could have been taken only by the Municipal Authority. If no objection is taken by the Municipal authority, the same shall be deemed to have been waived by the said authority. Therefore, the application under Order 7 Rule 11, CPC as preferred by the defendants deserves to be dismissed not on the ground as dismissed by the trial court but on the ground as aforementioned.

7. In view of the same, the present revision petition is dismissed.

8. Stay petition also stands disposed of.