

(2018) 06 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7631 of 2018

Chatarsingh Rathore @APPELLANT@Hash Udaipur Chamber of Commerce and Industries

Date of Decision : 06-06-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 10, Order 7 Rule 10A, Order 43 Rule 1(a), Order 7 Rule 10A(5)
Constitution of India, 1950 — Article 227

Citation : (2018) 06 RAJ CK 0003

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Chatar Singh Rathore, Anil Mishra

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioners aggrieved against the order dated 17.5.2018 passed by the Senior Civil Judge, Udaipur (the trial court), whereby, exercising powers under Order VII Rule 10 CPC, the trial court has ordered for return of the plaint and thereafter on an

application having been made by the petitioners under Order VII Rule 10-A CPC, date has been fixed for appearance of the parties before the

National Company Law Tribunal, New Delhi (NCLT).

The petitioners plaintiffs filed a suit for declaration and injunction against the respondents in relation to the elections scheduled to be held for the respondent No.1.

On behalf of the defendants, preliminary objections were filed questioning the jurisdiction of the trial court. It was, inter alia, contended that the

jurisdiction for dealing with the subjectmatter of the suit lies with the NCLT under the provisions of the Companies Act, 2013 and, therefore, the

jurisdiction of the Civil Court was barred.

The petitioners' plaintiffs contested the submissions made on behalf of the defendants.

After hearing the parties, the trial court by its order dated 17.5.2018 came to the conclusion that the jurisdiction pertaining to the subject-matter of the suit lies with the NCLT and ordered for return of the plaint under provisions of Order VII Rule 10 CPC.

Whereafter, on the same day an application was filed by the petitioners -plaintiffs seeking direction for fixing a date for appearance of the parties

before the competent authority.

The trial court after having passed the order under Order VII Rule 10 CPC, allowed the application filed by the petitioners and exercising powers

under Order VII Rule 10-A CPC, ordered for appearance of the parties before the NCLT on 22.5.2018.

The petitioner No.1 present in person attempted to question the validity of the order passed under Order VII Rule 10 CPC and further submitted that

when pursuant to the order of return of the plaint, the matter was sought to be presented before the NCLT, the petitioners were advised by the

counsel that the matter cannot be presented before the NCLT and, therefore, the orders are being challenged before this Court under writ jurisdiction.

A perusal of the orders impugned dated 17.5.2018 indicates that power has been exercised by the trial court firstly under Order VII Rule 10 CPC and

thereafter on an application having been filed by the petitioners under Order VII Rule 10-A CPC.

If the petitioners were aggrieved with the order passed under Order VII Rule 10 CPC, an appeal against the said order lies under the provisions of

Order XLIII Rule 1(a) CPC, which appeal could be filed in the present case, before the District Judge Udaipur. However, once an application / prayer

under the provisions of Order VII Rule 10-A CPC has been filed / made and order thereon has been passed by the trial court, under the provisions of

order VII Rule 10A(5) CPC as well as order XLIII Rule 1(a) CPC, appeal against such orders is not maintainable.

Once the petitioners have chosen to file an application under Order VII Rule 10-A CPC and order thereon has been made against which, appeal has

specifically been barred under the provisions of CPC, by way of invoking

jurisdiction under Article 227 of the Constitution of India, the petitioners cannot be permitted to circumvent the bar created by law in this regard.

Further the submission made by the petitioners that when pursuant to the directions of the trial court, the petitioners sought to file proceedings before the NCLT, they were advised that such proceedings were not maintainable before the NCLT and, therefore, the present writ petition has been filed

cannot be countenanced, inasmuch as, once the trial court had passed the order, the only available procedure for the petitioners, was to file

proceedings before the NCLT and if the same were not entertained, the petitioners could have taken further proceedings in accordance with law.

However, merely based on alleged legal advice that such proceedings were not maintainable before NCLT despite the order passed by the trial court,

the proceedings cannot be maintained before this Court under Article 227 of the Constitution of India.

In view thereof, no interference is called in writ jurisdiction against the orders dated 17.5.2018. The writ petition has no substance, the same is, therefore, dismissed.