

(2014) 01 RAJ CK 0141
In the Rajasthan High Court
Case No : Civil Revision Petition No. 129/11

Firm Roop Chand Budha Lal and Another	APPELLANT
Vs	
Firm Ram Narayan Surajmal and Others	RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d) 115 151

Citation : (2015) 1 WLN 118

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : S.C. Mittal, for the Appellant;

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present revision petition filed u/s 115 of CPC is directed against the order dated 15.3.11 passed by the Civil Judge (JD) North, Kota (hereinafter referred to as "the trial court") in Civil Suit No. 366/01, whereby the trial court has dismissed the application of the petitioners-defendants seeking rejection of the plaint under Order VII Rule 11(d) of CPC. In the instant case it appears that the respondents had earlier filed one suit for eviction against the petitioners-defendants on the ground of default in the payment of rent and on other grounds, in which some of the issues were decided in favour of the petitioners and other in favour of the respondents and the trial court had dismissed the suit of the respondents-plaintiffs by giving the benefit of first default to the petitioners. Being aggrieved by the said decree the respondents-plaintiffs had preferred an appeal before the appellate court and the appellate court affirmed the findings recorded by the trial court on all the issues except the issue No. 8 and held that the suit was not maintainable, while dismissing the appeal vide the order dated 24.8.05. Hence, both the parties preferred the separate second appeals before the High Court. According to the petitioners, the Second Appeal being No. 168/06 filed by the petitioners has been admitted by the court after framing the substantial questions of law, whereas the Second

Appeal being No. 864/07 filed by the respondents was dismissed on 5.12.07 by the High Court. However, in the meantime the respondents-plaintiffs filed the second suit on 6.12.01 seeking eviction of the petitioners from the suit premises on the ground of second default for the period from February, 1999 to November, 2001. The petitioners, therefore, filed an application under Order VII Rule 11 of CPC seeking rejection of the plaint which has been dismissed by the trial court vide the impugned order.

2. It has been submitted by the learned counsel Mr. S.C. Mittal for the petitioners that earlier suit filed by the respondents was held to be not maintainable by the appellate court, and hence the second suit on the ground of second default was also not maintainable. Relying on the decision of the Apex Court in the case of Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, he submitted that the subsequent events rendering suit infructuous can be brought to the notice of the court u/s 151 of CPC, and that the trial court had committed an error in not taking into consideration the subsequent facts for rejecting the plaint.

3. Nobody has appeared on behalf of the respondents though duly served. It cannot be gainsaid that the plaint could be rejected under Order VII Rule 11(d) of CPC only when the court is satisfied that the suit is barred under any law, as appearing from the averments made in the plaint. In the instant case, the petitioners-defendants has failed to point out as to how the suit of the respondents-plaintiffs would be barred by any law and that too as appearing from the averments made in the plaint. Whether the second suit filed by the respondents seeking eviction of the petitioners-defendants on the ground of second default allegedly made by them would be maintainable or not would be a matter of evidence, and there is nothing to suggest from the averments made in the plaint that the subsequent suit was barred under any law. Under the circumstances, the trial court has rightly dismissed the application of the petitioners under Order VII Rule 11 of CPC. The said order being just and proper, the court is not inclined to interfere with the same. The petition, therefore, deserves to be dismissed and is accordingly dismissed.