

(2023) 06 KAR CK 0012

In the Karnataka High Court

Case No : Civil Revision Petition No. 543 Of 2022 (IO)

Gowrish S.K

APPELLANT

Vs

Anil Kumar. P & Ors

RESPONDENT

Date of Decision : 08-06-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Section 151
Karnataka Gram Swaraj And Panchayath Raj Act, 1993 — Section 17(1)
Code Of Civil Procedure Code, 1908 — Order VII, Rule 11, Order 7, Rule 11(d)

Citation : (2023) 06 KAR CK 0012

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Prasanna Kumar R.S, Prakash Timmanna Hebbar, Leena C. Shivapuramath

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. Heard the learned counsel for the petitioner, learned counsel for respondent No.1 and learned HCGP for respondent Nos.3 and 5.
2. This revision petition is filed challenging rejection of application filed under Order VII, Rule 11(d) read with Section 151 of C.P.C. and Section 17(1) of the Karnataka Gram Swaraj and Panchayath Raj Act, 1993.
3. The main contention of the petitioner before the Trial Court while filing the impugned application is that, there is non-compliance of Section 17(1) of the Karnataka Gram Swaraj and Panchayath Raj Act, 1993. It is also contended that, in the affidavit accompanying the application, answer elicited from the mouth of P.W.1 is also extracted in Para No.5 and prayed this Court to dismiss the petition and the same is resisted to by the learned counsel appearing for the respondents.
4. The Trial Court, having considered the contention of the learned counsel for the parties and also the objection, in Para No.12, made an observation that, it is

well settled law that a petition has to be rejected on any one of the grounds stated in Order VII, Rule 11 of C.P.C. only on the averments of the petition. However, the respondent No.4 is relying on the oral evidence and documents marked as exhibits in the evidence of P.W.1 in support of his grounds urged for rejection of petition. Hence, it is clear that he is seeking rejection of the petition on the basis of the evidence adduced by the petitioner, particularly the admissions given by the P.W.1 during his cross-examination. Hence, the Court comes to the conclusion that, it is settled position of law that petition cannot be rejected on the basis of the allegations made in the counter statement or in an application filed for rejection of petition.

5. Admittedly, the evidence has commenced and witnesses were also examined. On perusal of the affidavit accompanying the application, it is seen that evidence of P.W.1 is extracted in Para No.5, seeking rejection of the petition. The very contention of the petitioner is that there is non-compliance of Section 17(1) of the Karnataka Gram Swaraj and Panchayath Raj Act, 1993 and the Trial Court, while considering the said ground, in Para No.13 observed that, when the trial is in progress, it is not proper to decide the merits or the defense of the contesting respondent on the guise of deciding the application filed for rejection of petition.

6. Having perused the order, I do not find any error committed by the Trial Court in dismissing the application, since trial has been commenced and based on the defense also, Order VII, Rule 11 of C.P.C. cannot be invoked and the same has to be considered only on the averments of the petition and not on the defense. Therefore, it is settled law that defense cannot be considered in an application filed invoking Order VII, Rule 11 of C.P.C. Hence, I do not find any merit in the petition.

Accordingly, the petition is dismissed.

The Trial Court is directed to dispose of the matter as expeditiously as possible.