
(2013) 09 MP CK 0074
In the Madhya Pradesh High Court
Case No : C.R. No. 84 of 2013

Kusuma Rathore

APPELLANT

Vs

Sharad Sharma

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2, Order 4 Rule 1(3), Order 6 Rule 15(4), Order 7 Rule 10, Order 7 Rule 11

Citation : (2013) 09 MP CK 0074

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Vivek Jain, for the Respondent

Judgement

Sheel Nagu, J.—Learned counsel for the rival parties are heard on the question of admission. This civil revision u/s 115 of C.P.C. assails interlocutory order passed on 15.05.2013 by 2nd Civil Judge, Class-II, District Shivpuri in Civil Suit No. 144-A/2012, whereby application under Order VII Rule 11 of CPC preferred by the defendants, on the ground of plaint being barred by law and not disclosing any cause of action, has been rejected.

2. The basic facts giving rise to the instant revision are that after receipt of the plaint, on being returned by the Court of incompetent jurisdiction, the plaint was filed before the trial court without being supported by an affidavit as per section 26 of CPC to the extent that the same affidavit which was filed before the incompetent court was annexed alongwith plaint filed before the competent court, without carrying out any correction and without filing fresh and appropriate affidavit.

3. The trial court rejected the application under Order 7 Rule 11 of CPC stating that the said defect is curable and is not fatal to the maintainability of the plaint as the same is procedural in nature.

4. It is contended in the application under Order 7 Rule 11 of CPC that the plaint

has not been filed before the competent court in duplicate and, therefore, it is barred by section 26 and the provisions of Order IV Rule 1(3) and Order VI Rule 15(4) of CPC. Reliance has been placed in the case of Bhakti Hari Nayak and Others Vs. Vidyawati Gupta, S.C. Agarwala (HUF) and Others,

5. On the other hand, learned counsel for the respondent has relied upon to Order 7 Rule 10 of CPC which relate to return of plaint to contend that the plaint on having been presented before the incompetent court was returned and was then rightly presented to the Court of competent jurisdiction in terms of Order X Rule 2 of CPC. Learned counsel for the respondent has placed reliance on the case of St. George Shipping Co. Ltd. Vs. M.v. "Irene P" a foreign flag vessel and others, . It is further contended on behalf of the respondent that assuming without admitting that the affidavit filed alongwith plaint is defective, the said defect ought to be ignored as it is curable for which entire plaint cannot be thrown out.

6. The trial court has permitted rectification of resubmitted written plaint. The petitioner is aggrieved by the order impugned to the extent that no such rectification can take place as defective affidavit filed in the resubmitted written plaint which has not been filed in duplicate violates the mandatory provision contained in section 26 read with Order 4 Rule 13 and Order 6 Rule 15(4) of CPC.

7. True, it is that the resubmitted written plaint is supported by a defective affidavit, but by that itself cannot lead to rejection of the plaint under Order 7 Rule 11 of CPC. The reason being plaintiff resubmitted the written plaint shall be true to be instituted only when the defect in the affidavit is cured. Till the defect is not cured the plaint shall be treated to be only filed and not instituted.

8. The decision cited by learned counsel for the rival parties lays down that mere defect in the affidavit of resubmitted written plaint cannot entail rejection of the plaint under Order 7 Rule 11 of CPC. Moreover, learned trial Judge has found that the resubmitted written plaint was submitted in duplicate.

9. In view of above, the order passed by learned trial Judge cannot be found to be beyond jurisdiction or occasioned any illegality or material irregularity much less prejudiced to the defendant/petitioner herein and the trial Court has not transgress any of its jurisdictional limit and, therefore, no case for interference is made out in the instant civil revision. Accordingly, this civil revision deserves to be and is, therefore dismissed, sans cost.