

(2008) 10 UK CK 0004
In the Uttarakhand High Court
Case No : Civil Revision No. 21 of 2008

Manu Maharani Hotels Ltd.	Vs	APPELLANT
Thakur Dan Singh Bisht Trust and Another		RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 9

Citation : (2009) 1 UC 580

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : Deepak Dhingra and Siddhartha Sah, for the Appellant; Arvind Vashistha, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—By the impugned order, the learned Court below has rejected the Petitioners' application filed under Order 7 Rule 11 CPC for rejection of plaint.

2. I have heard the detailed arguments of the Learned Counsel for the parties. I have very carefully perused the impugned order, the copy of the plaint as well as the copy of the application filed by the Petitioner under Order 7 Rule 11 CPC

3. A plain reading of Order 7 Rule 11 CPC clearly suggests that the Court is bound to reject the plaint in the following cases:

- (i) Where the plaint does not disclose the cause of action;
- (ii) Where the relief claimed is under valued and the Plaintiff, on being required by the Court to so correct the valuation within the time to be fixed by the Court, fails to do so;
- (iii) Where the relief claimed is properly valued; but the plaint is written upon insufficiently stamped paper, and the Plaintiff, on being required by the Court to make up the deficiency in the Court fee, fails to do so;

(iv) Where with reference to the statement contained in the plaint itself, the suit is barred by any law;

(v) Where the plaint is not filed in duplicate;

(vi) Where the Plaintiff fails to comply with the provisions of Rule 9.

4. Admittedly, in the present case, we are not concerned with the last two mentioned aspects. A plain reading of the plaint together with the application filed under Order 7 Rule 11 clearly reveals that in this case we are concerned with the first four aspects only. Whether the plaint did or did not disclose a cause of action or whether the suit with reference to the averments contained in the plaint was barred by any law, were indeed matters which went to the very basic maintainability of the suit. The application filed by the Petitioners under Order 7 Rule 11 CPC very elaborately dealt with and touched upon various relevant and important aspects, yet in a slipshod manner, the learned Court below, without considering such aspects in their proper perspective did not return definite findings whether or not the plaint disclosed a cause of action or whether the suit based upon the averments contained in the plaint was or was not barred by any law and whether it was maintainable in the form in which it was filed.

5. Actually while examining the aforesaid and other legal aspects, the learned court below did not even take into account the nature of the relief claimed by the Respondents-Plaintiffs in the prayer part of the plaint, it did not specifically take into account the legal aspects with reference to the averments contained in the plaint, especially the aspect as to whether the Plaintiff could claim the relief of mandatory injunction seeking possession of the property in question. Clearly linked with this aspect was the aspect relating to the valuation of the suit. Whether, based upon the prayer for relief of possession, when admittedly, with reference to the averments contained in the plaint, the Plaintiffs were not in possession of the property, the suit was properly valued for the purposes of Court fee or not was another aspect which should have been gone into by the Court below.

6. Unfortunately, the learned Court below did not properly deal with the aforesaid aspects and did not return definite findings. Yes, the Defendant could have filed the written statement in answer to the plaint and could have taken all pleas available as were taken in the application filed under Order 7 Rule 11 CPC and based on such pleadings of the parties, the learned trial Court could have framed issues and proceeded to try the suit. The said course of action would, however, have frustrated the very purpose of Order 7 Rule 11 CPC because based upon proper consideration, if any one of the conditions mentioned in Order 7 Rule 11 CPC were found to exist, the Court was bound to reject the plaint, thus saving the Defendants the onerous and hazardous task of contesting a non-maintainable suit during the course of a protracted litigation. The purpose of Order 7 Rule 11 CPC is to free the Defendant from such hazardous and onerous responsibility of contesting a suit which may not be ultimately found and held to be maintainable

at the very threshold, if any one of the conditions mentioned in Rule 11 is held to be applicable to the suit.

7. The learned Court below, upon a very plain reading of the impugned order, has not taken into account the aforesaid binding provision of law and has wrongly rejected the application of the Petitioner.

8. This petition is allowed. The impugned order is set aside. The learned trial Court is directed to reconsider the Order 7 Rule 11 application, by re-hearing the parties and by passing a fresh detailed and speaking order in the light of the observations made above.

9. Since the matter is pending consideration, and because as per the directions contained in this judgment, the learned Trial Court has to re-hear and re-decide Order 7 Rule 11 CPC application and dispose it of afresh, I have refrained from making any comment or expressing any view with respect to any aspect raised in Order 7 Rule 11 application. If, however, unwittingly in the course of this order, any opinion might have come to be expressed, the learned trial Court shall ignore any such observation and shall not consider or construe it as an expression of opinion by this Court about any such matter.

10. The parties, through their learned Counsel, are directed to appear before the learned Court below on 24th November 2008.