
(2004) 04 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 16279 of 2004

Raj Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

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

Citation : (2004) 3 AWC 2515 : (2004) 102 FLR 559 : (2004) 96 RD 673

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.S. Maurya, for the Appellant; Anuj Kumar, Addl. S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard learned counsel for the petitioner.

2. The petitioner, aggrieved by an order passed by the trial court rejecting his application 71Ga and objection 77Ga.

3. The petitioner raised an objection that the suit filed on behalf of Gaon Sabha cannot be filed through a private counsel who is not a penal lawyer and thus there is violation of Para 103 of the Gram Samaj Manual. The trial court accepted the plea and rejected the plaint under Order VII. Rule 11. Aggrieved thereby the plaintiff preferred an appeal before the lower appellate court. The lower appellate court reversed the order passed by the trial court and held that the suit is maintainable. Aggrieved thereby the petitioner approached this Court by means of this writ petition.

4. Learned counsel for the petitioner could not demonstrate that the provision of Para 103 of Gram Samaj Manual is mandatory. In the absence of any such provision or any law the provision regarding procedure is always held to be directory unless specially made mandatory. It having not done the argument of the learned counsel for the petitioner cannot be accepted.

5. The writ petition is dismissed.