

(2013) 11 RAJ CK 0115
In the Rajasthan High Court

Case No : Civil Revision Petition No"s. 225, 226, 227, 228, 229, 230, 231, 232 and 233 of 2013

Urban Improvement Trust, Jodhpur (Now J.D.A.) APPELLANT
Vs

Kailash Chand Modi and Another RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0115

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rajesh Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—These revision petitions are directed against the order dated 13.8.2013 passed by the Additional District Judge No. 5, Jodhpur Metropolitan, whereby the application filed by the petitioner under Order VII, Rule 11 CPC has been rejected. The brief facts may be noticed thus: the respondent No. 1 filed a suit for cancellation of sale deed, permanent injunction and compensation against the then Urban Improvement Trust and certain private parties, in whose favour the sale deed was executed by the petitioner. The relief claimed in the suit inter-alia including cancellation of the sale deed and permanent injunction against the defendant No. 1 ? private party. It appears that when for a long time, no written statement was filed by the petitioner-Trust, the written statement was closed. However, it is pointed out that subsequently, the written statement alongwith application u/s 148 CPC has been filed for taking on record the said written statement, but no order on the said application has been filed and still the written statement is not on record.

2. It appears that to get over the said situation, wherein the written statement on behalf of the petitioner is not on record, an application under Order VII, Rule 11 CPC was filed by the petitioner inter-alia on the ground that the plaintiff has not complied with the mandatory provisions of Section 98 of the Rajasthan Urban

Improvement Act, 1959 ("the Act") and therefore, the suit was not maintainable.

3. Though no reply to the said application was filed by the plaintiff. The learned trial court after hearing the parties dismissed the application under Order VII, Rule 11 CPC.

4. It is submitted by learned counsel for the petitioner that the language of Section 98 of the Act clearly envisage a notice and admittedly no notice was issued by the plaintiff before instituting the suit and as such, the same was apparently barred u/s 98 and the plaint was liable to be rejected under the provisions of Order VII, Rule 11(d) CPC, however, the trial court without advertng to the said provision in proper perspective has dismissed the application.

5. I have considered the submissions made by learned counsel for the petitioner.

6. Section 98 of the Act provides for two months" notice in writing in a case where the suit is in respect of an act purporting to be done under the provisions of the Act. Sub-section (4) of Section 98 provides that the said requirement would not apply for a suit, wherein the relief claimed is an injunction of which the object would be defeated by giving of the notice.

7. The similar nature provision u/s 241 of the Rajasthan Municipalities Act, 1959 came to be interpreted by this Court in Suresh Chandra and Dhan Raj v. Shri Hanuman Prasad S.B. Civil Second Appeal No. 173/1986, wherein on a reference made to the Division Bench, the Division Bench answered the same as under:-

(1)- Section 271 of the Act aforesaid is not a provision of public policy but one for the benefit of the municipality or the persons mentioned therein.

(2)- Giving of notice is a condition precedent to exercise jurisdiction. But, this being a mere procedural requirement, the same does not go to the root of jurisdiction in true sense of the term. The indication is clear that the requirement of notice on expiry of a particular period has no jurisdictional effects.

(3)- Looking to this nature of the provision of the notice the same is capable of being waived by the defendants and on such waiver the court gets a jurisdiction to entertain and try the suit.

(4)- The question whether in fact there is waiver or not would necessarily depend on facts of each case, and is liable to be tried by the same court if raised.

8. Based on the said answer as noticed above, in Suresh Chandra and Dhan Raj Vs. Shri Hanuman Prasad, , the second appeal in which the reference was made came to be decided and the suit which was dismissed by the trial court exercising powers under Order 7 Rule 11(d) CPC was reversed in second appeal and the matter was remanded back to the trial court to proceed further in the suit.

9. In view of the law laid down by this Court in the case of Suresh Chandra and Dhan Raj (supra), it is apparent that the procedure of giving notice is mere

procedural and same does not go to the root of jurisdiction and requirement of notice on expiry of a particular period has no jurisdictional effect. The requirement is capable of being waived by the defendant and on such waiver the court gets jurisdiction to entertain and try the suit.

10. As noticed herein-before, the written statement was not filed by the petitioner in time and the same was closed and the matter remained pending as it is and the application u/s 148 seeking extension of time came to be filed in the year 2007 and thereafter, the application under Order VII, Rule 11 CPC was filed in the year 2010. The apparent conduct of the petitioner clearly indicates that the requirement of notice, if any, already stands waived and the application under Order VII, Rule 11 CPC was filed merely as a last resort to overcome the deficiency, of the written statement not being on record. Further admittedly the suit was filed seeking permanent injunction as well.

11. In view of the above discussion, the order passed by the trial court rejecting the application filed by the petitioner under Order VII, Rule 11 CPC does not call for any interference.

12. These revision petitions have no substance and the same are, therefore, dismissed. The stay applications also stands dismissed.