

R.K. ROJA

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v.

U.S. RAYUDU AND ANOTHER

(Civil Appeal No. 5540 of 2016)

JULY 04, 2016

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[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

*Code of Civil Procedure, 1908 – Or. 7 r 11 – Rejection of
plaint – On facts, election petition by respondent challenging the
election of the appellant – Application u/Or. 7 r 11 by appellant for
rejection of the petition by way of counter affidavit – Non-
consideration of the same since there was no formal application
and court proceeded with the trial – Subsequently, formal application
for rejection of the petition by appellant – Non-disposal of the same
and posted along with the main petition as also denial of opportunity
to the appellant to file written statement – On appeal, held:
Application u/Or. 7, r. 11 can be filed at any stage – Court has to
dispose of the same before proceeding with the trial court – There
is no point in proceeding with the trial of the case – Petition is only
to be rejected at the threshold – Appellant entitled to file the
application for rejection before filing his written statement and in
case, the application is rejected, appellant is entitled to file his written
statement thereafter – Procedure adopted by the court not warranted
under law – Thus, the impugned order is set aside – Since the
application does not come within the purview of any of the situations
u/Or. 7 r 11 (a) to (f), application is rejected – Appellant given an
opportunity to file written statement in the Election Petition within
the stipulated period.*

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*Saleem Bhai and others v. State of Maharashtra and
others (2003) 1 SCC 557:2002 (5) Suppl. SCR 491;
Sopan Sukhdeo Sable and others v. Assistant Charity
Commissioner & others (2004) 3 SCC 137 – relied on.*

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Case Law Reference

(2004) 3 SCC 137	relied on	Para 5
2002 (5) Suppl. SCR 491	relied on	Para 6

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5540 of 2016.

From the Judgment and Order dated 27.04.2016 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in E. A. No. 222 of 2016 in E. P. No. 4 of 2014.

B V. Giri, Sr. Adv., Amit Kumar, A. Ramesh, Syed Ahamed, Allam Ramesh, Ms. Shilpi Gupta, Shaurya Sahay, Avijit Mani Tripathi, Prithvi Pal, Ms. Rekha Bakshi, Advs. for the Appellant.

B. Adinarayana Rao, Sr. Adv., Suyodhan B., Ms. Tatini Basu, Advs. for the Respondents.

C The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

D 2. The appellant has two grievances - (i) The Court has not disposed of an application filed by her under Order VII Rule 11 of The Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for rejection of the Election Petition and the same has been posted along with the main petition and (ii) She is denied an opportunity to file written statement.

E 3. The first respondent herein filed an Election Petition challenging the election of the appellant to the 289 Nagiri Assembly Constituency. Appellant was declared elected on 16.05.2014. The election petition is dated 30.06.2014. On receipt of notice in the Election Petition, the appellant filed Annexure-P/4-application for rejection of the Petition, under Order VII Rule 11 of the CPC by way of a counter affidavit. It appears that the court declined to consider the same on the ground that there was no formal application and hence proceeded with the trial. At that stage, F appellant filed Annexure-P/5-formal application for rejection of the Election Petition on the ground that the Election Petition did not disclose any cause of action. That application as per the impugned order dated 27.04.2016 was posted along with the main petition, and thus, the appeal.

G 4. The High Court has taken the view that the same "was not filed at the earliest opportunity" and that appellant was not diligent in prosecuting the application. Therefore, the court took the view that ... *"this application filed by the first respondent shall be decided at the time of final hearing ..."*.

H 5. We are afraid that the stand taken by the High Court in the

impugned order cannot be appreciated. An application under Order VII Rule 11 of the CPC can be filed at any stage, as held by this Court in **Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others**¹ ... “*The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. ...*”. The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f) of the CPC, the same has to be rejected.

6. Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter (See **Saleem Bhai and others v. State of Maharashtra and others**²). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from paragraph-20 of **Sopan Sukhdeo Sable** case (supra):

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. ...”

7. In **Saleem Bhai** case (supra), this Court has also held that ...
“*A direction to file the written statement without deciding the*

¹ (2004) 3 SCC 137

² (2003) 1 SCC 557

A *application under Order VII Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction of the trial court.*” However, we may hasten to add that the liberty to file an application for rejection under Order VII Rule 11 of the CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.

B 8. Apparently, in the present case, it is seen that Annexure-P/4-Affidavit dated 15.03.2015, with a prayer ... “*to dismiss the present Election Petition under Order VII Rule 11 of the CPC...*”, was filed within thirty days of the receipt of the summons in the Election Petition. However, the court was not inclined to consider the same in the absence of a formal application, and thus, Annexure-P/5-Application No. E.A. No. 222 of 2016 was filed on 22.02.2016 leading to the impugned order, posting the application for consideration at the time of final hearing.

C 9. The procedure adopted by the court is not warranted under law. Without disposing of an application under Order VII Rule 11 of the CPC, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly.

D 10. However, the concern expressed by the High Court with regard to the alleged attempt on the part of the appellant for delaying the trial of the Election Petition cannot be brushed aside. Therefore, we have heard the learned Senior Counsel appearing for the appellant on the application under Order VII Rule 11 of the CPC. We are satisfied that the said Application does not come within the purview of any of the situations under Order VII Rule 11 (a) to (f) of the CPC. Therefore, the application is rejected. In the peculiar facts of this case which we have narrated above, the appellant is given an opportunity to file written statement in the Election Petition within two weeks from today.

E 11. Since the Election Petition has been pending before the High Court since 2014, we request the High Court to dispose of the same before the end of this year.

F 12. The appeal is disposed of accordingly.

G Nidhi Jain

Appeal disposed of.