

2023 LiveLaw (SC) 799

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., PANKAJ MITHAL; J.

September 12, 2023.

CIVIL APPEAL NO.5841 OF 2023 (Arising out of S.L.P.(Civil) No.35740 of 2017)

KESHAV SOOD versus KIRTI PRADEEP SOOD & ORS.

Code of Civil Procedure, 1908; Order VII Rule 11 - Rejection of Complaint & *Res judicata* - As far as scope of Rule 11 of Order VII of CPC is concerned, the Court can look into only the averments made in the complaint and at the highest, documents produced along with the complaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application. Hence, the issue of *res judicata* could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. (Para 5 & 6)

(Arising out of impugned final judgment and order dated 06-02-2017 in RFA No. 26/2014 passed by the High Court of Delhi at New Delhi)

For Petitioner(s) Mr. Mukesh Kumar Verma, Adv. Mr. Pankaj Kumar Singh, Adv. Mr. Vikas Gupta, Adv. Mr. Vivek Gupta, Adv. Mr. Manindra Dubey, Adv. Mr. Raj Singh Rana, AOR

For Respondent(s) Mr. Sanjay Jain, AOR

ORDER

Leave granted.

2. Heard the learned counsel appearing for the appellant.

3. The appellant is the original defendant. He applied in the suit filed by the respondents for rejection of the complaint under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (For short, "CPC"). Written statement was filed by the appellant raising a contention of bar of *res judicata*. In the application filed by the appellant under Rule 11 of Order VII of CPC, reliance was placed on several documents/orders of various Courts. The learned Single Judge rejected the complaint under Order VII Rule 11 of the CPC. In the appeal preferred by the respondents/plaintiffs, a Division bench of the High Court has interfered on merits by holding that the finding on the plea of *res judicata* recorded by the learned Single Judge was not correct.

4. After having heard the learned counsel appearing for the parties, we find that the plea of *res judicata* could not have been gone into on an application made by the appellant under Rule 11 of Order VII of CPC. Apart from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of Order VII of CPC were required to be gone into for deciding the issue of *res judicata*.

5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the complaint and at the highest, documents produced along with the complaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of *res judicata* could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither

the learned Single Judge nor the Division Bench at this stage could have decided the plea of *res judicata* raised by the appellant on merits.

7. Therefore, we agree with the final conclusion of the Division Bench of the High Court that the suit needs to be decided on merits with a modification that the issue of *res judicata* will remain open and the learned Single Judge will frame an issue on *res judicata* along with the other issues.

8. By keeping open the issue of *res judicata*, the appeal is disposed of.

9. There shall be no order as to costs.

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