

SUPREME COURT OF INDIA**Bench: Justice Abhay S. Oka and Justice Pankaj Mithal****Date of Decision: September 12, 2023**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5841 OF 2023

(Arising out of S.L.P.(Civil) No.35740 of 2017)

KESHAV SOOD**...
APPELLANT(S)****VS****KIRTI PRADEEP SOOD & ORS.****...
RESPONDENT(S)****Section, Acts, Rules, and Articles Mentioned in Judgment:**

Rule 11 of Order VII of the Code of Civil Procedure, 1908 (CPC)

Subject: Civil Appeal regarding the rejection of plaint under Rule 11 of Order VII of CPC, specifically concerning the scope of Rule 11 and the applicability of the concept of res judicata in such proceedings.

Headnotes:

Civil Appeal – Rejection of Plaint Under Rule 11 of Order VII of CPC
– Appellant sought rejection of the plaint based on bar of res judicata
– Learned Single Judge rejected the plaint, while the Division Bench of High Court reversed the decision – Supreme Court held that the

issue of res judicata could not be decided under Rule 11 of Order VII of CPC at this stage. [Para 2-6]

Scope of Rule 11 of Order VII of CPC: The Court clarified that Rule 11 allows it to only look into the averments made in the plaint and, at most, documents produced along with the plaint. Defense and documents relied upon by the defendant cannot be considered while deciding an application under Rule 11 of Order VII of CPC. [Para 5]

Res Judicata: The Supreme Court clarifies that the plea of res judicata could not be decided at this stage. The issue involves consideration of pleadings in the earlier suit, the judgment of the Trial Court, and the judgment of the Appellate Courts. The issue will be framed for future proceedings. [Para 4,6]

Final Conclusion and Disposition: The Supreme Court agrees with the Division Bench's final conclusion that the suit needs to be decided on merits, with a modification that the issue of res judicata remains open for future proceedings. The appeal is disposed of with no order as to costs. [Para 7-8]

Referred Cases: None.

Advocates:

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 plaint 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 plaint 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 plaint and at the highest, documents produced along with the plaint. 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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