



**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CR No. 242 of 2025**

**1 - Jk Lakshmi Cement Limited Malpurkhurd, Ahiwara, Tehsil Dhamdha, District Durg Chhattisgarh.....Defendants No. 3**  
**... Applicant**

**versus**

**1 - Derhin Bande W/o Roshan Lal Bande Aged About 45 Years Girhola, Tahsil Dhamdha, District Durg Chhattisgarh**

**2 - Radhika Chandel W/o Bhuvan Lal Chandel Aged About 55 Years Silli, Po Tumakala, Tahsil Dhamdha, District Durg Chhattisgarh**

**3 - Gautarhin W/o Gangaprasad Aged About 50 Years Aheri, Post Dhaur, Via. Jamul Tahsil Dhamdha, District Durg Chhattisgarh.....Plaintiffs**

**4 - Shatruhan Banjare And Athers S/o Pyarelal Banjare Aged About 60 Years Malpurikhurd, Post Ahiwara, Tahsil Dhamdha, District Durg Chhattisgarh**

**5 - Vedbati Devi W/o Padam Singh Aged About 45 Years Siddharth Agriculture Farm, Ward No. 3, Ahiwara, District Durg Chhattisgarh, Present Residence Royalgreen Junwani, Bhilai, Tehsil 7 District Durg Chhattisgarh .....Defendant No. 1 And 2**

**6 - Dashoda Bai Barle W/o Lt. Sjhyan Barle Aged About 75 Years Banbard, Post Nandani, Tahsil Dhamdha, District Durg Chhattisgarh**

**7 - Triveni Baghel W/o Gajanand Baghel Aged About 65 Years Achoti, Post Godhi, Tahsil Dhamdha, District Durg Chhattisgarh**

**8 - Nemin Chaturvedi W/o Narayan Chaturvedi Aged About 45 Years Patharia, Post Nandini Khundni, Tahsil Dhamdha, District Durg Chhattisgarh....Defendant No. 4 To 6**

**9 - (1) Dileep Joshi S/o Lt. Ramlal Joshi Aged About 40 Years Panchdevi, Post And Police Station Kumhari, Tahsil And District Durg Chhattisgarh**

**10 - (2)** Puniabai W/o Lekhram Aged About 50 Years Dhansuli, Thana Mandir Hasaud, District Raipur Chhattisgarh

**11 - (3)** Jagjivan Aged About 36 Years, Panchdevi, Post Kapsada, District Durg Chhattisgarh

**12 - (4)** Punita W/o Surendra Markandey Aged About 35 Years Okhara, Ps Nandini, District Durg Chhattisgarh

**13 - (5)** Sushila W/o Dileep Banjare Aged About 34 Years Ringani, Ps Nandini, District Durg Chhattisgarh

**14 - (6)** Jayprakash Soni Aged About 30 Years Panchdevi, Post Kapsada, Ps Kumhari District Durg Chhattisgarh

**15 - (7)** Chhatrapal Panchdevi Post Kapsada, Ps Kumhari, District Durg Chhattisgarh

**16 - (8)** Durpati W/o Nitesh Aged About 30 Years Khangharpath Ps Berla, District Bemetara Chhattisgarh

**17 - (9)** Khileshwar S/o Shrawan Aged About 27 Years Tadha, Ps Charoda, District Raipur Chhattisgarh

**18 - (10)** Mamta D/o Shrawan Aged About 20 Years Tadha, Ps Pasouda Dharsiva, District Raipur Chhattisgarh .....Defendant No. 7 To 16

**19 - State Of Chhattisgarh Through Collector, District Durg Chhattisgarh**

**... Respondent(s)**

**(Cause-title is taken from Case Information System)**

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For Applicant : Mr. N. Naha Roy, Advocate

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For State : Mr. Hariom Rai, Panel Lawyer

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**SB- Hon'ble Shri Justice Amitendra Kishore Prasad**

**Order on Board**

**06/01/2026**

1. The present civil revision has been filed being aggrieved by the impugned order dated 09.01.2023 passed by the learned II<sup>nd</sup> Additional Judge to the First Civil Judge, Class-I, Durg, District Durg (C.G.), in Civil Suit No. Class-A/15/2022, whereby the

application preferred by the revisionist under Order VII Rule 11(b) of the Code of Civil Procedure, 1908 read with Section 7(v-a)(b) of the Court Fees Act, 1870 was rejected. The learned Court below has failed to exercise jurisdiction vested in it by law by declining to decide a pure question of law relating to valuation of the suit and payment of proper court fee as a preliminary issue and has instead erroneously treated the same as a mixed question of fact and law, thereby compelling the revisionist to invoke the revisional jurisdiction of this Court to prevent failure of justice.

2. The facts of the case, in brief, are that the applicant is a company duly incorporated under the provisions of the Companies Act and is engaged in the business of manufacturing cement. In the course of its business activities, the applicant established a large-scale cement manufacturing unit at the place mentioned in the cause title, pursuant to a Memorandum of Understanding dated 28.07.2010 executed with the State Government. The said industrial unit has been set up after substantial investment and the applicant has been in lawful possession and enjoyment of the land forming part of the project area. Respondent Nos. 1 to 3, herein the plaintiffs, instituted a civil suit in January, 2022 bearing Civil Suit No. Class-A/15/2022 before the competent Civil Court at Durg (C.G.). In the said suit, the plaintiffs sought a declaration that the sale deeds dated 27.04.2010 and 20.10.2010 are null and void and not binding upon them. They further sought partition of

the suit property and a declaration that the entire property standing in the name of late Pyarelal, including the portions transferred under the aforesaid sale deeds, is joint Hindu family property, liable to be partitioned among the plaintiffs, defendant No.1 and defendant Nos.4 to 10 in equal shares. The plaintiffs also sought a permanent injunction restraining interference in the suit property. The applicant herein was arrayed as defendant No.3 in the said civil suit. Upon service of summons, the applicant entered appearance and filed an application under Order VII Rule 11(b) of the Code of Civil Procedure, 1908 read with Section 7(vi-a)(b) of the Court Fees Act, 1870, raising a specific objection regarding the maintainability of the suit. It was contended that the suit was not properly valued and that the plaintiffs had failed to affix the requisite court fee, thereby rendering the suit beyond the pecuniary and jurisdictional competence of the Court. The applicant pointed out that, as per Clause 10 of the plaint, the plaintiffs had affixed a nominal court fee of Rs. 100/- by invoking Section 7(v)(c) of the Act of 1870, which applies only to suits for possession of land or houses. It was specifically urged that the reliefs sought in the plaint were in the nature of declaration and partition and, therefore, the applicable provision was Section 7(vi-a)(b) of the Act of 1870. Under the said provision, where a plaintiff claims partition while being out of possession but asserts the status of a coparcener or co-owner, the court fee is required to be paid on the full market value of the plaintiff's share. In the present

case, the plaintiffs neither claimed possession nor sought a decree for possession and, therefore, could not have invoked Section 7(v)(c) of the Act. It was further specifically pleaded that the portion of the suit property in question is admittedly in possession of the petitioner company and in absence of any clear averment in the plaint regarding possession of the plaintiffs, the valuation adopted by them was wholly arbitrary and illegal. The failure of the plaintiffs to pay ad-valorem court fee on the market value of their alleged share, as mandated under Section 7(vi-a)(b) of the Act of 1870, rendered the suit not maintainable and liable to be rejected at the threshold. It was contended that the plaintiffs had deliberately undervalued the suit and affixed grossly insufficient court fee, and therefore, the plaint was liable to be rejected under Order VII Rule 11(b) of the Code of Civil Procedure, 1908. Respondent Nos.1 to 3/plaintiffs filed their reply dated 06.12.2022 to the said application, denying the objections raised by the petitioner. Simultaneously, they preferred an application under Order VIII Rule 10 of the Code of Civil Procedure, 1908, seeking closure of the petitioner's right to file written statement and for pronouncement of judgment. Upon receipt of the application under Order VIII Rule 10 CPC, the applicant filed a detailed reply dated 16.12.2022, placing reliance upon the judgment of the Hon'ble Supreme Court in Shrihari Hanuman Das Totla v. Hemant Vithal Kamat reported in (2021) 9 SCC, contending that an application under Order VII Rule 11 CPC

is required to be decided solely on the basis of averments made in the plaint and can be considered at any stage of the proceedings. It was further asserted that consideration of the written statement or evidence is wholly irrelevant while deciding such an application, particularly when the issue raised pertains to the jurisdiction of the Court. The applicant therefore prayed for rejection of the application under Order VIII Rule 10 CPC. The said reply has been annexed as Annexure P/6. The applicant submits that despite the clear mandate of Order VII Rule 11(b) CPC and the settled legal position, the learned Court below, instead of directing the plaintiffs to correct the valuation and make good the deficiency in court fee, arbitrarily rejected the applicant's application vide impugned order dated 09.01.2023. The learned Court erroneously held that the issue of court fee involved a mixed question of law and fact and could be decided only after recording of evidence, which is contrary to the law laid down by the Hon'ble Supreme Court. It is further submitted that the rejection of the application under Order VII Rule 11(b) CPC directly affects the maintainability of the suit and the jurisdiction of the Trial Court. The impugned order is vague, arbitrary and suffers from non-application of mind, thereby necessitating interference by this Court in exercise of its supervisory/revisional jurisdiction to secure the ends of justice.

3. Learned counsel for the applicant submits that the impugned order rejecting the application filed under Order VII Rule 11 of the

Code of Civil Procedure, 1908 read with the relevant provisions of the Court Fees Act, 1870, is *ex facie* illegal, arbitrary and perverse, and therefore wholly unsustainable in the eyes of law. The learned Court below has failed to exercise the jurisdiction vested in it and has committed a manifest error by refusing to address a foundational issue which goes to the very root of maintainability of the civil suit. It is further submitted that the learned Court below has completely overlooked the settled position of law that, before entertaining a civil suit, the Court is duty-bound to satisfy itself that proper and requisite court fee has been affixed. The issue of court fee is a threshold issue and cannot be deferred for consideration after recording of evidence. Therefore, rejection of the application under Order VII Rule 11 CPC on the premise that the issue would be decided at a later stage is wholly contrary to law. Learned counsel contends that the learned Court below also failed to appreciate that the respondents/plaintiffs, by affixing court fee under Section 7(v)(c) of the Act of 1870, had themselves admitted that they were not in possession of the suit property on the date of institution of the suit. In such circumstances, and in view of the relief of partition sought in the plaint, the only provision applicable for valuation and payment of court fee was Section 7(vi-a)(b) of the Act of 1870. The plaintiffs, having failed to comply with the mandatory statutory requirement, rendered the suit not maintainable. It is further argued that the learned Court below gravely erred in holding that

the issue of proper valuation and court fee is a mixed question of law and fact. The fixation of court fee flows directly from the pleadings in the plaint, particularly from the specific averments relating to possession, and therefore constitutes a pure question of law. Such an issue has a direct bearing on the jurisdiction of the Court and ought to have been decided as a preliminary issue before proceeding further with the trial. Learned counsel further submits that the judgments of the Hon'ble Supreme Court relied upon by the applicant clearly lay down that while deciding an application under Order VII Rule 11 CPC, the Court is required to consider only the averments made in the plaint and not the contents of the written statement. Consequently, the question of deficient court fee could and ought to have been decided solely on the basis of the plaint averments, and the learned Court below committed a grave jurisdictional error in postponing such determination. It is also submitted that the law laid down by the Hon'ble Supreme Court and the Madhya Pradesh High Court unequivocally mandates that the issue of court fee must be decided on the basis of the market value of the suit property prevailing on the date of institution of the suit, and that such determination can be made at any stage of the proceedings, either before registration of the suit or after issuance of summons. Since the issue of court fee directly impacts the jurisdiction of the Court, the learned Trial Court acted arbitrarily in calling upon the applicant to file written statement and proceeding further in the

matter without first deciding the application under Order VII Rule 11 CPC. Learned counsel further submits that the Hon'ble Supreme Court has categorically held that continuation of trial proceedings without deciding an application under Order VII Rule 11 CPC amounts to a procedural irregularity having a direct nexus with the jurisdiction of the Court. The impugned order, therefore, suffers from serious legal infirmity. Lastly, learned counsel submits that this Court, in similar circumstances, has consistently taken the view that an application under Order VII Rule 11 CPC deserves to be decided at the earliest and that any deficiency in court fee must be directed to be cured before proceeding further in the suit. Reliance in this regard is placed upon the order dated 08.10.2018 passed in WP(227) No. 869/2018. In light of the aforesaid submissions, it is prayed that the impugned order be set aside and appropriate directions be issued in the interest of justice.

4. Learned State counsel submits that the impugned order passed by the learned Trial Court is just, proper and in accordance with law and does not call for any interference. It is contended that the learned Court below has rightly held that the issue raised by the applicant involves mixed questions of fact and law which can be appropriately adjudicated only after recording of evidence. The petition, therefore, is premature and devoid of merit and is liable to be dismissed.

5. I have heard learned counsel for the parties and have also perused the documents enclosed along with the revision.
6. The grievance of the applicant, in substance, is that the issue of valuation of the suit and sufficiency of court fee, when it arises purely from the averments made in the plaint, has a direct bearing on the maintainability of the suit and the jurisdiction of the Court, and therefore ought to have been examined and decided as a preliminary issue. According to the applicant, postponement of such determination until the stage of evidence amounts to failure to exercise jurisdiction vested in the Trial Court.
7. Having heard learned counsel for the parties and upon perusal of the record, this Court is of the considered view that the objection raised by the applicant regarding valuation of the suit and payment of proper court fee is not wholly devoid of substance. It is well settled that where the determination of court fee can be made on the basis of the plaint averments, such issue may be treated as a preliminary issue, as it goes to the root of the jurisdiction of the Court to entertain the suit. At the same time, the Court is also conscious of the fact that rejection of the plaint is a drastic consequence and the law contemplates that, wherever possible, an opportunity should be afforded to the plaintiff to rectify any defect relating to valuation or court fee.
8. In the present case, since the applicant has restricted the relief and does not insist upon rejection of the plaint at this stage, this Court finds it appropriate, in the interest of justice, to issue a

limited direction to the Trial Court. Such a course would balance the rights of both the parties and ensure that the issue touching the jurisdiction of the Court is addressed at an early stage without prejudging the merits of the suit.

9. Accordingly, considering the aforesaid limited prayer made by learned counsel for the applicant, the concerned Trial Court is directed to frame a preliminary issue with respect to valuation of the suit and affixation of court fee and to decide the same in accordance with law. If, upon such determination, the Trial Court comes to the conclusion that further court fee is required to be paid, it shall be open to the Trial Court to pass necessary and appropriate orders in that regard.
10. With the aforesaid observation and direction, the civil revision stands disposed of.

No order as to costs.

**Sd/-**

**(Amitendra Kishore Prasad)**

**JUDGE**

*Shayna*