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NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WP227 No. 1283 of 2025**

Santosh Kothari S/o Poonam Chand Ji Kothari Aged About 61 Years R/o Kothari Bhawan, Kamptee Line, Rajnandgaon Chhattisgarh

... Petitioner**versus**

1 - Prabandhak Mandal Karalaya Food Corporation Of India And Others, Office At 1st Floor, Nanesh Complex, Opposite Krishi Upaj Mandi, Durg, Dhamdha Road, Kadambari Nagar, Durg Chhattisgarh.

2 - Food Corporation Of India F C I Naka, Raipur Naka, Rajnandgaon, Chhattisgarh.

3 - Assistant General Manager F C I Regional Office, Kapa Vidhansabha Marg, Raipur Chhattisgarh.

4 - Chairman F C I Head Office, 19-20, Barakhamba Lane, New Delhi.

5 - State Of Chhattisgarh Through Collector, Rajnandgaon Chhattisgarh

6 - Union Of India Through Secretary Of Ministry Of Food And Public Distribution, Department Of Food And Public Distribution, Krishi Bhawan, New Delhi.

... Respondents**(Cause title, as taken from CIS)**

For Petitioner	:	Mr. Shobhit Koshta, Advocate.
For Resp. /FCI	:	Mr. Dheeraj Kumar Wankhede, Advocate.
For Resp. /State	:	Mr. Rohitashva Singh, Dy. Govt. Advocate.
For Res. /Union of:		Ms. Anmol Sharma, Central Govt. Counsel

India

Hon'ble Shri Justice Sachin Singh Rajput**Order On Board****28/02/2026**

1. An order dated 15.11.2025 passed by 3rd District Judge, Rajnandgaon



in Misc. Civil Appeal No. 03/2025 is under challenge before this Court in the instant writ petition under Article 227 of the Constitution of India.

2. Learned counsel for the petitioner submits that the petitioner, who happens to be the plaintiff, has filed a civil suit before the trial Court *inter alia* seeking a relief of declaration of title and possession in respect of the suit property comprising piece of Khasra No. 130/40, area 43,500 square feet of land situated at Village- Lakholi, P.H. No.42, R.I.C.- Rajnandgaon, Tehsil & District – Rajnandgaon (C.G.). A prayer is also made that the defendants No. 1 to 4 have constructed house and boundary wall over the suit property, which may be demolished and the vacant possession of the same may be delivered to the petitioner/plaintiff. The aforesaid civil suit was registered as Civil Suit No. 42-A/24 {*Santosh Kumar Kothari vs. Manager, Food Corporation of India and others*}. Respondents No. 1 to 4/defendants have filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC') before the trial Court with a prayer that the aforesaid suit is not properly valued and the proper court fee has also not been paid. It has further been pleaded that as there is superstructure constructed over the suit property, valuation of the suit ought to have been made on the value of the superstructure. The said application was rejected by the learned Third Civil Judge, Junior Division, Rajnandgaon vide its order dated 02.12.2024 holding that the grounds raised in the application under Order 7 Rule 11 of the CPC can be decided only after recording of evidence of the parties. The defendant No. 2 has assailed the said order by filing a misc. appeal under Order 43 Rule 1 of the CPC before learned 3rd District Judge, Rajnandgaon (C.G.). The said appeal was allowed by the learned 3rd District Judge, Rajnandgaon vide impugned order dated 15.11.2025, which has been challenged by the petitioner by filing instant writ petition.



3. Learned counsel for the petitioner/plaintiff further submits that an appeal under Order 43 Rule 1 of the CPC against the order dated 02.12.2014 dismissing the application under Order 7 Rule 11 of the CPC is not maintainable, though he failed to prove whether he had raised such plea during the hearing of the Miscellaneous Appeal or not, but since it is a legal question, it can be agitated at any point of time. He further submits that learned 3rd District Judge, Rajnandgaon was not having jurisdiction to entertain the said appeal under Order 43 Rule 1 of the CPC, and while allowing the said appeal, he exceeded his jurisdiction, which is not vested in it. Thus, only on this count, the impugned order is liable to be set aside.

4. Learned counsel for respondent -Food Corporation of India submits that the grounds, which have been agitated in the instant writ petition, was never a subject matter of adjudication before learned 3rd District Judge, Rajnandgaon. No such finding has been recorded by learned District Judge as to whether it has the jurisdiction to entertain the appeal under Order 43 Rule 1 CPC against the order rejecting the application under order 7 Rule 11 of the CPC. As the petitioner /plaintiff failed to raise this ground before learned 3rd District Judge, Rajnandgaon, we have now been stopped to take this ground in the appeal and even in the instant writ petition under Article 227 of the Constitution of India. He further submits that no such pleading has been made in this regard before this Court also, as such, the instant writ petition is liable to be rejected.

5. Learned counsel for the State as well as Union of India would submit that the dispute is essentially between the petitioner/plaintiff & Food Corporation of India.

6. I have heard learned counsel for the parties and perused the material



available on record.

7. The factual scenario involved in this writ petition is not in dispute. Admittedly, the petitioner/plaintiff has instituted a civil suit for declaration of his title and vacant possession over the subject property as mentioned herein-above. It is also an admitted position that superstructure is constructed over the suit property, for which, the petitioner is claiming demolition of same and vacant possession of the suit property. An application under Order 7 Rule 11 of the CPC was filed by the defendant No. 1/Food Corporation of India stating *inter alia* that the suit is not properly valued and proper court fee has not been deposited.

8. Learned 3rd Civil Judge, Junior Division, Rajnandgaon, District Rajnandgaon has rejected the aforesaid application filed by Food Corporation of India holding grounds raised in the application under Order 7 Rule 11 of the CPC can be decided only after recording of evidence of the parties, which was subjected to challenge by the defendant/Food Corporation of India before the 3rd District Judge, Rajnandgaon. The appeal was filed by the defendant – Food Corporation of India under Order 43 Rule 1 of the CPC

9. In order to appreciate the arguments advanced on behalf of petitioner/plaintiff, it would be apt to quote the provisions contained in Order 43 Rule 1 of the CPC, which reads thus :-

43 An appeal shall lie from the following orders under the provisions of section 104,

namely:-

(a)an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10A of Order VII has been followed]

(b)[*****]



- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;
- (e) [*****]
- (f) an order under rule 21 of Order XI;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (ja) [an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable.
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- na) [an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent persons:
- (p) orders in interpleader-suits under rule, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2 [rule 2A], rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order rule 23 [or rule 23A] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2.1977).] of



Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(w)an order under rule 4 of Order XLVII granting an application for review.”

10. Perusal of the provisions contained in Order 43 Rule 1 of the CPC, it is apparent that the same does not disclose that the power is vested with the 3rd District Judge, Rajnandgaon to entertain appeal under Order 43 Rule 1 of CPC. It is well settled that provision to appeal is created by statute and the court, on assumption, would not entertain the appeal.

11. Arguments has been advanced by learned counsel for the respondent/FCI that the petitioner has failed to raise this ground at the time of hearing of appeal before 3rd District Judge, Rajnandgaon and no pleading has made in the instant writ petition also. These arguments does not appeal to this Court, as it is well settled principle of law that this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, should refrain itself from interfering with the order passed by the Court below, except in such cases where perversity, illegality, material irregularity or jurisdictional error is writ large on the face of the record.

12. In view of the provisions contained in Order 43 Rule 1 of the CPC, this Court is of the opinion that 3rd District Judge, Ranjandgaon has exceeded his jurisdiction while allowing the application filed by defendant /Food Corporation of India, which is not vested in it, therefore, the impugned order dated 15.11.2025 allowing the application under Order 7 Rule 11 of the CPC deserves to be set aside.

13. Accordingly, the writ petition is allowed. Impugned order dated 15.11.2025 passed by 3rd District Judge, Rajnandgaon is liable to be and is hereby set aside. However, the respondent/FCI is at liberty to assail the



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order dated 02.12.2024 passed by 3rd Civil Judge Junior Division, District

Rajnandgaon (C.G.) in accordance with law.

Sd/-

(Sachin Singh Rajput)

Judge

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