



**A.F.R.**

**ORISSA HIGH COURT : CUTTACK**

**C.R.P. No.19 of 2024**

An application under Section 115 of the Code of Civil  
Procedure, 1908

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Niharkanti Mishra

...

**Petitioner**

*-VERSUS-*

Nihar Ranjan Patnaik & Others ...

**Opposite Parties**

***Counsel appeared for the parties:***

For the Petitioner : Mr. B.Mohanty, Advocate.

For the Opposite Parties : Mr. B.Baug, Advocate

*P R E S E N T:*

**HONOURABLE  
MR. JUSTICE ANANDA CHANDRA BEHERA**

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**Date of Hearing: 17.03.2025 :: Date of Judgment : 03.04.2025**

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## **JUDGMENT**

***ANANDA CHANDRA BEHERA, J.—***

1. This revision under Section 115 of the C.P.C,1908 has been filed by petitioner (defendant No.3 in the suit vide C.S. No.169 of 2023 pending in the Court of learned Civil Judge, Sr. Division, Bhubaneswar) against the Opposite Parties Nos.1 and 2 (plaintiffs in that suit vide C.S. No.169 of 2023) arraying the defendant Nos.1, 2, 4, 5, 6 and 7 of that suit vide C.S. No.169 of 2023 as proforma Opposite Parties challenging an order of rejection of his petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C.,1908 passed on dated 13.03.2024 by the learned Civil Judge, Sr. Division, Bhubaneswar in C.S. No.169 of 2023.

2. The factual backgrounds of this revision, which prompted the petitioner (defendant No.3 in the suit vide C.S. No.169 of 2023) for filing of the same is that, the suit vide C.S. No.169 of 2023 was filed by the O.P. Nos.1 and 2 of this revision being the plaintiffs against the defendants including the petitioner in this revision praying for declaration of title, cancellation of sale deeds and for permanent injunction stating about the accrual of its cause of action in Para No.16 of their plaint.



3. In that suit vide C.S. No.169 of 2023, the defendant No.3 filed a petition on dated 05.01.2024 under Order 7 Rule 11 of the C.P.C. Praying for rejection of the plaint of the plaintiffs (O.P. Nos.1 and 2 in this revision) on the ground that, the suit of the plaintiffs vide C.S. No.169 of 2023 is without cause of action and as such there is no cause of action for the plaintiffs to file the suit. For which, the plaint of the plaintiffs vide C.S. No.169 of 2023 is liable to be rejected.

4. The plaintiffs (O.P. Nos.1 and 2 in this revision) objected to the same by filing their objection denying the claim of the defendant No.3.

5. After hearing from both the sides, the Trial Court rejected such petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C. of the defendant No.3 as per Order dated 13.03.2024 assigning the reasons that,

*“when the averments in the plaint of the plaintiffs are disclosing the cause of action for filing of the same, then, the question of rejection of their plaint does not arise”.*

6. On being dissatisfied with the said order dated 13.03.2024 passed by the learned trial court rejecting the petition dated



05.01.2024 under Order 7 Rule 11 of the C.P.C. of the defendant No.3, he (defendant No.3) challenged the same by filing this revision.

7. I have already heard from the learned counsel for the petitioner and the learned counsel for the Opposite Party Nos.1 and 2.

8. It appears from Para Nos.10 and 11 of the petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C. of the petitioner (defendant No.3) that, he (petitioner) had filed such petition for rejection of the plaint of the plaintiffs, on the ground that, there no cause of action i.e. non-existence of cause of action in the plaint of the plaintiffs for filing the suit vide C.S. No.169 of 2023.

9. Now, it is to be seen, whether the above ground raised by the defendant No.3 (petitioner in this revision) for rejection of the plaint of the plaintiffs vide C.S. No.169 of 2023 on the ground of non-existence of cause of action in the plaint of the plaintiff is entertainable under law?

10. Whether, a plaint discloses cause of action or not is essentially a question of fact.



So, whether, cause of action does or does not exist in the plaint of the plaintiffs must be found from the readings of the plaint itself.

11. It is the settled propositions of law that, a plaint can never be rejected for non-existence of cause of action, but, a plaint can be rejected for non-disclosure of cause of action.

12. There is distinction between non-disclosure of cause of action and non-existence of cause of action.

13. So, non-disclosure of cause of action in a plaint would fall within the ambit of Order 7 Rule 11 of the C.P.C. for rejection of the plaint, but, whereas, non-existence of cause of action would not fall within the ambit of Order 7 Rule 11 of the C.P.C. for rejection of plaint.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

- (i) In a case between ***Dahiben Vrs. Arvinbhai Kalyanji Bhanusali (D) thr. LRs. & Others*** reported in ***2021 (1) Civ.C.C. 210 (SC)*** that, whether a plaint discloses a cause of action or not is



essentially a question of fact, but, whether it does or does not must be found out from reading the plaint itself.

(ii) In a case between ***Kishore Kumar Vrs. Ishar Dass*** reported in **2024 (4) CCC 123 (J & K)** that, there is distinction between “non-disclosure of cause of action” and “non-existence of cause of action”. Non-disclosure of cause of action in a plaint would fall within ambit of Order 7 Rule 11 of the C.P.C. for rejection of the plaint, but, non-existence of cause of action would not fall within ambit of Order 7 Rule 11 of the C.P.C. for rejection of the plaint.

(iii) In a case between ***Jageshwari Devi & Others Vrs. Shatrughan Ram*** reported in **2007 (15) SCC 52** that, there is distinction between “non-disclosure of cause of action” and “non-existence of cause of action”. Non-disclosure of cause of action in a plaint would fall within ambit of Order 7 Rule 11 of the C.P.C. for rejection of the plaint, but, non-existence of cause of action would not fall within ambit of Order 7 Rule 11 of the C.P.C. for rejection of the plaint.

14. When, in the petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C, 1908, the defendant No.3 (petitioner in this revision) had prayed for rejection of plaint of the plaintiffs on



ground of non-existence of cause of action stating in his petition that, the plaint of the plaintiffs is without cause of action and when according to him (petitioner), there is no cause of action in the plaint of the plaintiffs, then at this juncture, in view of the principles of law enunciated by the Hon'ble Courts and Apex Court in the ratio of the aforesaid decisions, the petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C. of the defendant No.3 (petitioner in this revision) for rejection of the plaint of the plaintiffs vide C.S. No.169 of 2023 on the ground of non-existence of cause of action was/is not entertainable under law. Because, the averments made in Para No.16 of the plaint of the plaintiffs are clearly and unambiguously disclosing cause of action for filing of the suit vide C.S. No.169 of 2023 by the plaintiffs against the defendants including the petitioner in this revision.

15. Therefore, the impugned order dated 13.03.2024 passed by the trial court in C.S. No.169 of 2023 rejecting the petition dated 05.01.2024 under Order 7 Rule 11 of the C.P.C. of the defendant No.3 (petitioner in this revision) cannot be held erroneous.



For which, the question of interfering with the same through this revision filed by the petitioner (defendant No.3) does not arise.

As such, there is no merit in the revision of the petitioner. The same must fail.

16. In result, the revision filed by the petitioner (defendant No.3 in the suit) is dismissed on contest, but, without cost.

17. Accordingly, the revision is disposed of finally.

**(ANANDA CHANDRA BEHERA)**  
**JUDGE**

*High Court of Orissa, Cuttack*  
*03.04.2025// Binayak Sahoo*  
*Jr. Stenographer*

Signature Not Verified

Digitally Signed  
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