HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Revision Petition No. 106/2024

Neeta Kapoor W/o Late Arun Kapoor, Aged About 55 Years, R/o Rajasthan Nursing Home, Near K.G. Complex, Industrial Area, Rani Bazar, Bikaner.

----Petitioner

Versus

1. Smt. Gayatri Devi W/o Rajkumar Sharma, R/o Behind Chopra Katla, Near K.g. Complex, Industrial Area, Rani Bazar, Bikaner.
2. Nagar Nigam Bikaner, Through Commissioner, Nagar Nigam, Bikaner.
3. State Of Rajasthan, Through Distt. Collector, Bikaner.

----Respondents

For Petitioner(s) : Mr. Nishank Madhan.
For Respondent(s) :

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

30/05/2024

1. Petitioner is aggrieved by order dated 03.05.2024 passed in Civil Suit No. 99/2024 whereby Learned Trial Court has refused to reject the plaint under Order VII Rule 11 CPC. Respondent No. 1 Gayatri Devi had filed the aforesaid suit wherein Municipal Corporation, Bikaner is one of the defendant i.e. defendant No. 2. The plaintiff stated that just by the side of her house, defendant No. 1 (petitioner herein) was making construction of a multistory building. She be restrained from opening any window etc. towards the house of the plaintiff and if any such construction has been made towards the house of plaintiff then the same should be removed.

2. Learned counsel for the petitioner submits that remedy to the plaintiff was before the competent authorities under Rajasthan Municipalities Act, 2009 vide Section 194(h). Therefore, before availing the remedy before a civil court, the plaintiff should have availed statutory remedy. The provision further stipulates that if anyone is still aggrieved by the order of the competent authority under the Municipal Act there is provision for appeal.

Learned counsel for the petitioner has relied on two judgments; one is of the Hon'ble Apex Court in *Dr. Ranveer Bose & Anr. Vs. Anita Das & Ors.* (non-reportable) and another is of the Rajasthan High Court in *Rohit Singh Vs. Vishambhar Dayal Shukla in S.B. Civil Revision Petition No.* 57/2013.

3. It is worth to notice that under Rajasthan Municipalities Act, 2009 there is no specific bar of the jurisdiction of civil court akin to Section 99 of the Jaipur Development Authority Act, 1982.

4. Since Section 99 of Jaipur Development Authority Act specifically bars cognizance by a Civil Court unless the issue/remedy which is required, under the Act, to be decided by the authority mentioned under the Act is availed of. In Rohit Singh case (supra), a Bench of this Court had considered Section 99 of the Act and held that the plaint was fit to be rejected under Order VII Rule 11(d) CPC as suit was specifically barred by the statute. The said judgment is not applicable in the facts and circumstances of this case.

5. In Dr. Ranveer Bose case, a writ petition was filed before the High Court of Calcutta ventilating identical grievance and praying relief in the nature of issuance of mandamus. The Hon'ble Supreme Court held that if the private respondent before the

Supreme Court was aggrieved of the irregularity committed, if any, in the construction raised by the appellants should have approached the municipal authorities and if no proper response was forthcoming, then the Civil Court was appropriate forum for ventilating the grievance of the nature which was raised before the writ court. Evidently, the Court was considering issue of alternative remedy before approaching the writ Court.

6. In this matter municipality is already a party. The Municipality would have opportunity to file written statement which may contain action taken in the matter of grievance of the plaintiff. There is no bar under the Municipal Act against directly approaching Civil Court for redressal of grievance which can be agitated before the authority as well, therefore, this Court is not inclined to interfere with the impugned order.

7. Accordingly, this revision petition stands dismissed.

(BIRENDRA KUMAR),J

9-Sumer/-