

Sr. No.121
Before Notice

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

(THROUGH VIRTUAL MODE)

**CM(M)No.1/2021
CM(4641/2021)
CM(4642/2021)**

AMAR NATH AND ANOTHER ...PETITIONER(S)

Through: Mr. Rakesh Chargotra, Advocate.

Vs.

Darshana Kumari & ors.RESPONDENT(S)

Through:

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR,
JUDGE**

**(ORDER)(ORAL)
04.06.2021**

CM No.4642/2021

Instant application seeking extension of time for annexing/ depositing the requisite court fee etc. with the petition, in view of the grounds urged therein, is allowed. The petitioner shall deposit the requisite court fee with the Registry of this Court within a period of one week from the date Registry resumes normal functioning.

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1. By the medium of instant petition, the petitioners have invoked the supervisory jurisdiction of this Court vested in terms of Article 227 of the Constitution of India for seeking quashment of the proceedings initiated by the Court of Sub Judge (13 FC), Jammu ["the trial court"] on a suit filed by respondent No.1 to 3.

2. It is the grievance of the petitioners that the suit, which is now taken cognizance of by the trial court, is third suit in succession filed by the respondent No.1 to 3 on same cause of action and, therefore, the same should not have been entertained.
3. Learned counsel for the petitioners submits that not only has he filed the written statement in the matter but has also sought rejection of the plaint in terms of Order VII Rule 11 CPC. His grievance is that though he has specifically taken the plea of non-maintainability of the suit in his application filed under Order VII Rule 11 CPC but the same is not being decided by the trial court, as a result whereof the petitioners are suffering irreparable loss and injury because of continuation of the interim order of status quo.
4. Learned counsel for the petitioners after arguing for a while submits that he would feel satisfied if this petition is disposed of at this stage by directing the trial court to consider and decide the application filed under Order VII Rule 11 CPC before proceeding further in the suit.
5. Having heard Mr. Chargoitra and perused the record, I am of the view that the prayer made by the learned counsel deserves to be accepted.
6. Without commenting upon the merits of the application which the petitioners have filed under Order VII Rule 11 CPC, suffice

it to say that once a plea of non-maintainability of suit is taken by the defendant and particularly when a specific application under Order VII Rule 11 is moved seeking rejection of the plaint, it is a bounden duty of the civil court trying the suit to first advert to and decide the said application.

7. In view of the aforesaid, this petition is **disposed** of at this stage by providing that the application of the petitioners filed in terms of Order VII Rule 11 CPC seeking rejection of the plaint of the respondent No.1 to 3, shall be considered and decided by the trial court at the earliest and in any case not later than two months from the a copy of this order is received by the trial court.

(Sanjeev Kumar)
Judge

Jammu;
04.06.2021
“Bhat Altaf, PS”