



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Revision Petition No. 212/2026
CNR: RJHC010719292026 | URN: CR / 522U / 2026

Mahesh Chandra Sharma S/o Madan Mohan Sharma, Aged About 75
Years, Kaustubh 1 A Navratan Modern Link Road Bhuvana Udaipur
Rajasthan

-----Petitioner

Versus

Rajkumar Pamecha S/o Tarachand Pamecha, 4 C Haridas Ji Ki Magri
Hotel Trident Road Udaipur Rajasthan Presently Residing At 8 A
Ambamata Scheme Udaipur Rajasthan

-----Respondent



For Petitioner(s) : Mr. Harsh Mehta Sr. Adv. assisted by
Mr. Sanjay Nahar
Mr. Muktesh Maheshwari
For Respondent(s) : Mr. Rajesh Joshi Sr. Adv. with
Mr. Jaideep Singh Saluja

HON'BLE MR. JUSTICE MANEESH SHARMA
Order

1.	Date of conclusion of Arguments	09.10.2026
2.	Date on which the order was reserved	09.10.2026
3.	Whether the full order or only operative part is pronounced	Full
4.	Date of pronouncement	16.10.2026

1. The present Civil Revision Petition has been preferred by the petitioner-defendant, challenging the order dated 14.07.2026 ("the impugned order") passed by the learned Trial Court, whereby the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") was dismissed with costs of Rs. 1,000/-.
2. The facts relevant to the present petition, as averred in the plaint, are that the respondent-plaintiff instituted a civil suit against the petitioner-defendant seeking specific performance of an oral agreement, together with a permanent injunction and a mandatory injunction. It is pleaded in the plaint that the parties entered into an oral agreement on 03.10.2025 for the sale of plots situated in Village Amberi, and that it was further agreed that the registered sale deed would be executed within a period of one year.



3. It is further averred that a dispute arose between the parties when the petitioner-defendant issued a notice dated 07.05.2026, purporting to terminate the oral agreement unilaterally. The respondent-plaintiff replied to the said notice on 14.05.2026, asserting that, since the one-year period stipulated under the agreement subsisted until 03.10.2026, the contract could not have been cancelled. The respondent-plaintiff accordingly sought specific performance of the oral agreement dated 03.10.2025, along with a permanent injunction and a mandatory injunction against the petitioner-defendant.

4. Upon service of summons in the suit, the petitioner-defendant filed an application under Order VII Rule 11(d) read with Section 151 of the CPC, seeking rejection of the plaint. In the said application, it was specifically contended that time was of the essence of the contract and that, the agreement having already been terminated by notice dated 07.05.2026, a suit for specific performance simpliciter, without seeking the primary declaratory relief that the termination be declared illegal, null and void, is barred by law.

5. After hearing the parties, the learned Trial Court, by the impugned order dated 14.07.2026, dismissed the said application and imposed costs of Rs. 1,000/- on the petitioner-defendant.

6. Aggrieved thereby, the petitioner-defendant has preferred the present civil revision petition.

7. Learned counsel for the petitioner-defendant submits that the learned Trial Court erred in overlooking that the oral agreement dated 03.10.2025 stood terminated by notice dated 07.05.2026, in which time was expressly made the essence of the contract. He further submits that, since the agreement stood cancelled prior to the institution of the suit, a suit for specific performance simpliciter, without seeking the primary declaratory relief that the termination be declared illegal, null



and void, is barred by law, and that the learned Trial Court ought therefore to have rejected the plaint under Order VII Rule 11 of the CPC.

8. In order to buttress his contentions he places reliance upon the judgment passed by the Hon'ble Apex Court in ***I.S. Sikandar (Dead) by Lrs Vs. K. Subramani & Ors.***¹ and ***R. Kandasmy (Since Dead) & Ors. Vs. T.R.K. Sarawathy & Anr.***²

9. *Per contra*, learned counsel for the respondent-plaintiff, supporting the impugned order, submits that the grounds raised by the petitioner in the application under Order VII Rule 11 of the CPC do not fall within the purview of that provision. He contends that the questions as to whether the contract was validly terminated or whether declaration qua the termination being null and void is necessary, or whether time was of the essence are inherently mixed questions of law and fact, which require completion of pleadings, the leading of evidence and a full-fledged trial. He lastly submits that the plaint cannot be rejected at the threshold by evaluating the defence set up by the defendant or because of not challenging the effect of alleged termination of the notice dated 07.05.2026, and that the impugned order, therefore, warrants no interference.

10. In order to buttress his contentions he places reliance upon the judgment passed by the Hon'ble Apex Court in ***Eldeco Housing and Industries Limted Vs. Ashok Vidyarthi & Ors.***³, and the judgment passed by a Co-ordinate Bench of this Court in ***Sandeep Singh Vs. Babita Yadav & Ors.***⁴.

11. Heard the learned counsel for the parties and perused the material available on record.

1 (2013) 15 SCC 27

2 2024 INSC 884

3 (2024) 11 SCC 503

4 S.B. Civil Revision Petition No.155/2026





12. It would be apt to reproduce Order VII Rule 11 of CPC, which reads as under:-

"Rejection of plaint - The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.] "

13. A perusal of the plaint averments and of the application under Order VII Rule 11 of the CPC reveals that the petitioner seeks rejection of the plaint primarily on the ground that the oral agreement dated 03.10.2025 stood terminated vide notice dated 07.05.2026 and the present suit, having been filed without seeking cancellation of the said termination, is barred by law.

14. Furthermore, the contention that a simpliciter suit for specific performance, without seeking the cancellation of the termination notice, is barred by law, does not fall within the strict contours of Order VII Rule 11 of the CPC. The determination as to whether a plaintiff is legally obligated to seek a primary declaratory relief against the termination before claiming specific performance relies heavily on the evidentiary validity of the termination itself. Such an objection, being a mixed





question of fact and law, cannot be mechanically accepted to reject the plaint at the threshold.

15. Even if the petitioner-defendant's argument is taken at face value, the defect pointed out is a curable defect during the course of the trial, as the respondent-plaintiff is always at liberty to move an application for the amendment of the plaint under Order 6 Rule 17 of the CPC, whereas a plaint being barred by law is a defect which cannot be cured. The question as to whether a decree for specific performance can be granted or not, cannot be equated with rejecting a plaint as being barred by law.

16. However, the plaint avers that the petitioner unilaterally terminated the agreement and that the respondent-plaintiff duly replied to the notice, categorically challenging the termination. Thus, whether the unilateral termination by the petitioner was valid and legal is a mixed question of fact and law.

17. The legality and validity of such unilateral termination, as well as the contentious issue whether time was in fact the essence of the contract, are disputed questions of fact. They can be determined only upon an examination of the pleadings and the evidence led by the parties during trial, and cannot be gone into at the threshold stage of an application under Order VII Rule 11 of the CPC.

18. It is a well-settled proposition of jurisprudence that while adjudicating an application under Order VII Rule 11 of the CPC, the court must confine its scrutiny solely to the averments made in the plaint, which must be assumed to be true and correct. The defense set up by the defendant, cannot be made the basis for rejecting the plaint. The grounds raised by the petitioner inherently require due pleadings, framing of issues and the adduction of evidence and, therefore, do not fall within the strict four corners of Order VII Rule 11 of the CPC.



19. As far as the reliance placed upon the judgments passed by the Hon'ble Apex Court in ***I.S. Sikandar*** (supra) and ***R. Kandasamy*** (supra) is concerned, though there is no quarrel with the legal proposition propounded therein, in the humble opinion of this Court, the aforesaid judgments are distinguishable on facts, as the contentious issues regarding whether seeking prayer for declaration of the unilateral cancellation of agreement as null and void is necessary and whether the unilateral cancellation of the oral agreement was valid, require a detailed examination of the pleadings, framing of issues and evaluation of evidence, more particularly when the time period agreed under the oral agreement was upto 03.10.2026 and the alleged unilateral termination was effected by legal notice dated 07.05.2026.

20. In view of the foregoing discussion, this Court is of the considered opinion that the learned Trial Court has assigned cogent and sufficient reasons in the impugned order.

21. Accordingly, this Court finds no jurisdictional error, perversity or illegality in the dismissal of the petitioner's application under Order VII Rule 11 of the CPC so as to warrant interference in the exercise of revisional jurisdiction under Section 115 of the CPC.

22. Consequently, the present Civil Revision Petition fails and is hereby dismissed in limine.

23. All pending applications, if any, shall stand disposed of accordingly.

(MANEESH SHARMA),J

Simran/-

