

46,DL,Ct.18.
05.01.2021
AJ.

C.O. 3301 of 2017

C.A.N. 1 of 2018 (Old No. 8340 of 2018)

**Mir Kawshim Ali @ Mir Kaoshair Ali & Ors.
-Vs-
Mir Manowar Hossain**

Mr. Anirban Das.
....for the petitioners.

The revisional application under Article 227 of the Constitution of India is directed against order dated February 17, 2017 passed by the 2nd Court of the learned Civil Judge, Senior Division, Barasat, district 24-Parganas (North) in Title Suit No. 612 of 2016.

The petitioner is the defendant in the said suit. The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner under Order VII Rule XI of the Code of Civil Procedure.

The petitioner by the said application is seeking rejection of the plaint of the said suit on the ground that the plaintiff on earlier occasion filed another suit on the selfsame subject-matter but the same was withdrawn without the leave of the Court to file afresh therefore, the present suit is hit by Order XXIII Rule 1(4)(b) of the Code of Civil Procedure.

The investigation under Order VII Rule XI of the Code is restricted to the averments made in the plaint. The ground on which the petitioner is seeking rejection of the plaint of the present suit is beyond the scope of such investigation. It is always open for the petitioner to urge the issue of maintainability of the suit on the said ground in course of trial of the suit.

Therefore, the learned Trial Judge has committed no jurisdictional error in refusing the prayer of the petitioner to reject the plaint of the said suit on the said ground.

C.O. 3301 of 2017 is devoid of any merit and is dismissed accordingly. There shall be no order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

The connected application being C.A.N. 8340 of 2018 is disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)