

24.12.2020
Court No. 19
Item No. 1
CP

C.O. 548 of 2020

Bakubullah Mullick & ors.
vs.
Sk. Ruhul Amin & anr.

Mr. Arun Naskar

....for the petitioners.

This is an application filed by the defendants in Title Suit No. 184 of 2019, being aggrieved by an order dated January 9, 2020 passed by the learned Civil Judge (Junior Division), 4th Court, Serampore, Hooghly. By the order impugned, the learned court below rejected an application under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

The petitioners contended that the order impugned was erroneous, inasmuch as, that the West Bengal Municipal Act, 1993 was a complete code to deal with any complaints with regard to unauthorized construction and constructions made contrary to the Municipal Building Rules and the civil court's jurisdiction was ousted under the said Act. It was submitted that the plaint should be rejected as the same did not disclose any cause of action and was barred by law. The petitioners also contended that the provisions of Section 407 of the

Municipal Act clearly barred a civil suit of such a nature.

I have considered the order impugned. The learned court below having considered the pleadings as narrated in the plaint and the prayers made therein came to the conclusion that a declaratory suit seeking a declaration that the construction made by the petitioner or attempted to be made by the petitioner was contrary to the West Bengal Municipal Act and also the Building Rules, could not be held to be barred under the provisions of Section 407 of the West Bengal Municipal Act, 1993. Moreover, the learned court came to the finding that whether the side space between the property of the petitioners and the property of the opposite parties was being encroached upon by the defendants while constructing the new building without leaving the side space as per the rules was a matter of trial and could not be decided at the stage of consideration of an application under Order 7 Rule 11.

I have gone through the pleadings and I find that in the plaint the cause of action has been pleaded as arising from the date when the defendants had engaged a developer to develop the property and the developer was proceeding with the construction hastily without paying any heed to any objection raised by the plaintiffs and also the

chairman of the municipality having acted in collusion with the defendants had not taken any action on the basis of the letters written by the plaintiffs. It was further alleged that the foundation of the construction had been laid and the construction was proceeding. The suit was filed with the reliefs claimed for declaration and injunction along with ad-interim prayers.

I have considered the provisions of Section 407 of the West Bengal Municipal Act, 1993 under which a suit was barred against any municipal authority or an employee in respect of any act done or purported to be done under the said act or the rules prescribed thereunder until after the expiration of one month next after a notice in writing has been delivered or left at the office of such authority. This provision does not apply in the instant case. The suit is one for declaration and for permanent injunction against a private individual. The authorities of the municipality are not parties to the suit.

The fact that the West Bengal Municipal Act and the Rules provided for reliefs similar to those claimed in the plaint cannot be a reason for rejecting the plaint under the provisions of Order 7 Rule 11 (a) and (d). Moreover, at the stage of consideration of an application under Order 7 Rule 11 of the Code of Civil Procedure, the court could not go beyond the

pleadings as stated in the plaint. In considering an application for rejection of a plaint, the plaint should be read as a whole. Mere excerpts and paragraphs could not be taken out of the plaint while deciding whether the plaint disclosed any cause of action or as to whether the suit was barred under any law.

Under such circumstances, I do not find that the petitioners have made out a case for rejection of the plaint at the very threshold. The point of maintainability of the suit shall be decided as an issue at the trial and the other allegations made by the petitioners with regard to compliance of the Municipal Rules etc. are points which are matters of evidence and cannot be decided at this stage. I do not find any illegality and/or irregularity in the order impugned.

The order impugned is upheld.

The revisional application is, thus, dismissed.
There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)