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20.11.2020.
b.d/d.p.

**C.O. 1206 of 2020
(CAN 1 of 2020)
(Via Video Conference)**

**Ms. Atashi Saha & Anr.
-vs-
Somnath Sarkar**

**Mr. Kushal Pal.
...For the Petitioners.**

**Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Debabrata Roy.
...For the Opposite Party.**

This application is against an order dated 7th August, 2020 in which the application for dismissal of the suit filed under Order 7 Rule 11 of The Code of Civil Procedure by the petitioners (defendants in the said suit) was rejected by the learned Judge, 2nd Bench, City Civil Court, Calcutta.

Learned counsel appearing for the petitioners submits that the disputes between the parties relates to a Deed of Settlement under which properties of the settlor were to devolve on certain specified successors in interest. Counsel submits that the intention of the settlor would be evident from the partition of the deed set out in the impugned order and that based on such extract, the learned Judge could not have come to the conclusion that the settlor intended to exclude all the female heirs of the two sons of the settlor. Counsel submits that the construction given by the learned Judge to the Deed is patently incorrect and contrary to the intention of the settlor.

Learned counsel appearing for the opposite party/plaintiff in the title suit submits that since the dispute before this Court concerns the construction of the deed, this is not the appropriate stage in which such issue can be adjudicated.

On hearing learned counsel for the parties, this Court is of the view that the dispute admittedly involves construction of the Deed of Settlement where the petitioner is the daughter of one of the sons of the settlor. The rejection of an application under Order 7 Rule 11 cannot stand in the way of a Court considering the import of the deed of settlement and intention of the settlor before it renders final judgment in the suit. The matter of construction of a deed which forms the central issue of an adjudication has to be gone into by a Court at the time of framing of issues, at the time of taking of evidence as well as at the time of final arguments. The judgement must also reflect the view of the learned Judge with regard to the construction of the deed in question,

This Court is therefore not inclined to interfere with the impugned order. The learned court below is directed to consider the issue with regard to interpretation of the Deed of Settlement during the course of hearing of the suit as well as at the stage of final arguments.

C.O. 1206 of 2020 and the connected application are disposed of in terms of the above.

(Moushumi Bhattacharya, J.)