

18.02.2021
Court No. 19
Item No.03
CP

C.O. 184 of 2021

Kaushik Chakraborty & anr.
vs.
Tarun Kumar Sashmal

Mr. S.A. Moqued
Mr. Numan Shah
Mrs. Arzun Nahar

.....for the petitioners.

Mr. Shiba Prasad Mukherjee
Mr. Debanjan Mukherjee

....for the opposite party

This revisional application has been filed by the defendants in Title Suit No. 12608 of 2011, being aggrieved by an order dated February 17, 2020, passed by the learned Civil Judge (Senior Division), 4th Court at Alipore. By the order impugned, the application filed by the defendants for local investigation was rejected and the application filed by the defendants under Order 7 Rule 11 of the CPC was directed to be heard out with the main issue of maintainability of the suit.

Aggrieved by the aforementioned order only to the extent of fixing the application under Order 7 Rule 11 of the CPC to be heard along with the issue of maintainability of the suit, the defendants have moved this revisional application.

The learned advocate for the petitioners submits that it is a settled law that an application under Order 7 Rule 11 of the CPC must be disposed of before the trial of the main suit. He relies on the decision dated July 9, 2020 of the Hon'ble Apex Court in the matter of Dahiben vs. Arvinbhai Kalyanji Bhanusali in Civil Appeal No. 9519 of 2019, in which it has been held that the application under Order 7 Rule 11 of the CPC should be taken up at any stage of the suit but before the completion of the trial.

It is an accepted proposition of law that the application under Order 7 Rule 11 should be taken up for hearing before the hearing of the main suit. The order impugned is set aside to the extent of fixing the hearing of the application under Order 7 Rule 11 of the CPC along with the issue of maintainability of the suit. The learned court below is directed to fix a date within three weeks from date, for hearing of the application under Order 7 Rule 11 of the CPC. The application shall be disposed of on its own merits and in accordance with law. This court has not gone into the merits of the same.

It is an admitted position that the written objection to the said application has already been filed by the plaintiff.

Till the application under Order 7 Rule 11 of the CPC is disposed of, the further proceedings in the Title Suit shall be stayed.

If the defendants take an adjournment on the date fixed by the learned court below, then the learned court below shall be at liberty to proceed with the Title Suit.

The revisional application is disposed of. 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.)