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28.07.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

**C.O. No. 1279 of 2021
(Via video conference)**

**Siddharth Agarwal
-Vs.-
STCL Limited**

Mr. Anirban Ray,
Mr. Ratnesh Rai,
Mr. Ankur Rai
...for the petitioner

Mr. Shiv Shankar Banerjee,
Ms. Sanchita Baraman Ray
...for the opposite party

The primary contention of learned counsel for the petitioner is that the court below acted without jurisdiction in passing the first impugned order on January 21, 2021, on a date when the defendant/petitioner was not available to move his application. Learned counsel for the petitioner contends that, despite having specifically held that in the absence of defendant no. 1/petitioner the court did not find any ground for passing any order on merits on the application taken up by the trial court, while passing that order, proceeded on the premise that a similar application had already been disposed of by the

court and the court, for all practical purposes, dismissed it on merits.

An application was subsequently filed for recall of the said order, which was dismissed by Order No. 29, dated April 19, 2021, which is the second impugned order in the present revisional application.

The plinth of the case of the revisionist-petitioner is that the previous applications, which were rejected by the trial court, did not pertain to similar issues as the current applications. One of the previous applications was under Section 8 of the Arbitration and Conciliation Act, 1996 and the other for stay of the suit awaiting the result of a different proceeding.

However, the present applications were filed questioning the maintainability of the suit, one for dismissal of the suit since the same was filed with the nomenclature 'Title Suit', although, in effect, the same was a money suit, the other being under Order XIV Rule 2 of the Code of Civil Procedure for framing of preliminary issue on the question of maintainability of the suit.

Upon hearing learned counsel for both sides and going through the materials-on-record, it is evident that the applications, which were

dismissed by the impugned orders, although touching the merits of the petitioner's application in his absence, insofar as the trial court held that similar issues had been decided earlier while rejecting the prior applications, the conclusion arrived at by the court below in rejecting the subsequent application cannot be faulted due to the reason that the said applications are *ex facie* frivolous and are apparently part of dilatory tactics adopted by the defendant/petitioner to stall the suit unnecessarily.

The first application, which was dismissed by the first impugned order, challenged the maintainability of the suit on the ground of its erroneous nomenclature as a 'Title Suit'. It was for the trial court to classify the suit under proper heading, irrespective of the nomenclature given in the plaint. In any event, since it is evident, from the reliefs claimed, that the suit is a money suit and the matter is to be heard by a commercial court, coupled with fact that maximum court fees were paid, there is no substance in the contention of such maintainability application.

As far as the framing of preliminary issues is concerned, which is the subject-matter of the second application rejected by the impugned

order, the application to that effect was premature, since no written statement has yet been filed by the defendant and it is contended by the plaintiff/opposite party that the statutory time limit for filing of such written statement has already expired. An issue (preliminary or otherwise) arises only when a fact is asserted by one party and denied by the other. Prior to filing of written statement by the defendant, it would be premature to frame any issue.

Be that as it may, it is apparent that both the applications, which were rejected by the impugned orders, were, on the face, frivolous and even if there was some technical flaw in the observations of the trial court inasmuch as the merits of the issues raised were touched in a cursory manner in the absence of the petitioner, the conclusions arrived at by the trial court in rejecting the said applications and subsequently refusing to recall such order of rejection, were correct.

Hence, the impugned orders do not justify interference under Article 227 of the Constitution of India.

Accordingly, C.O. No. 1279 of 2021 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)