

S/L 17
29.09.2021
Court. No. 7
sb

CO 1351 of 2021
(Via Video Conference)

M/s. K.G.N. Construction
Vs.
Nisith Kumar Porey & Ors.

Mr. Tulshi Das Ray, Advocate
Mr. Tirthankar Roy, Advocate

... for the Petitioner

Mr. B. Ghosal, Advocate
Mr. M. A. Samad, Advocate
Mr. Nayaab Mulla, Advocate

... for the Opposite Parties

The defendant no. 1 in a suit for declaration of tenancy right and for permanent injunction has filed the instant application challenging the order no. 20 dated March 24, 2021 passed by the learned Judge, 13th Bench, City Civil Court at Calcutta in Title Suit No. 1878 of 2019.

By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the petitioner herein was rejected.

Mr. Roy, the learned advocate for the petitioner submits that 7 plaintiffs have claimed their tenancy right in respect of 6 separate shop rooms and there is no unity of right, interest and possession in between the plaintiffs insofar as the shop rooms as mentioned in Schedule B is concerned. He thus submits that since the shop rooms in respect of which each of the plaintiffs are claiming their tenancy right is separate and distinct from each other, the instant suit jointly

filed by the plaintiffs is not maintainable and the same is barred by law.

Mr. Ghosal, the learned advocate for the opposite parties by placing reliance on the provision laid down in Order I Rule 1 read with Order II Rule 3 of the Code of Civil Procedure submits that such joinder of the plaintiffs as well as causes of action is permissible and the instant suit is not barred by any law.

I have heard the learned advocates for the parties and perused the materials on record including the plaint and the application under Order VII Rule 11 of the Code.

The plaintiffs claim to be the tenants under the defendant Nos. 2 to 6 in respect of 6 shop rooms specifically mentioned in Schedule B to the plaint. It is alleged that the defendant No.1 entered into an agreement with the defendant Nos. 2 to 6 for construction of a multistoried building after demolishing the shop rooms. The plaintiffs filed the instant suit for declaration of tenancy right and for permanent injunction.

From the statements made in the plaint it appears that each of the plaintiffs have a right to relief against the series of acts of the defendants jointly as well as severally . Even if separate suits are filed by the plaintiffs, common questions of fact and law would arise therein. Thus in view of the provisions laid down under Order I Rule 1 of the Code of Civil Procedure the plaintiffs could join in one suit.

It also appears from a bare reading of the plaint that the plaintiffs are jointly interested in protecting their possession in respect of the suit property against the alleged illegal acts of the defendants. Thus the plaintiffs are having causes of action in which they are jointly interested against the same defendants. Order II Rule 2 of the Code permits joinder of such causes of action in the same suit.

In the considered opinion of this Court, the instant suit at the instance of several plaintiffs claiming tenancy right in respect of separate shop rooms is maintainable in view of the provisions of Order I Rule 1 read with Order II rule 2 of the Code.

The learned Trial Judge has assigned cogent reasons for dismissal of the application under Order VII Rule 11 of the Code. The impugned order does not suffer from any infirmity.

CO 1351 of 2021 accordingly stands dismissed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Hiranmay Bhattacharyya, J.)