

15.02.2021
Court No. 19
Item No.52
CP

C.O. 3420 of 2019
with
CAN 1 of 2020
(not in the file)

Maidul Islam Molla
vs.
Kartick Kanchra & ors.

Mr. Tanmoy Mukherjee
Mr. Amal Kumar Saha

.....for the petitioner.

Mr. Sukanta Chakrabarty
Mr. Anindya Halder

....for the opposite party no. 1.

The revisional application has been filed by the defendant no. 1 in Title Suit No. 126 of 2017 which was filed by the opposite party no. 1/plaintiff.

Mr. Chakrabarty, learned advocate appearing on behalf of the opposite party no.1/plaintiff, submits that service of the revisional application on the other opposite parties had already been dispensed with by my predecessor Judge as the other opposite parties did not contest the application filed under Order 7 Rule 11 of the CPC.

The petitioner is aggrieved by the portion of the order dated July 26, 2019 by which the learned court below while considering an application under Order 39 Rules 1 and 2 of the CPC also disposed of

the application under Order 7 Rule 11 filed by the petitioner herein rejecting the same on the ground that the averments made in the said application could not be decided without evidence.

The revisional application was admitted for hearing solely on the ground that the learned court below *prima facie* erred in disposing of the application under Order 7 Rule 11 of the CPC filed by the petitioner without considering the contentions of the petitioner in the said application.

From the order impugned, it appears that the learned court below elaborately discussed the provisions of granting an injunction in a suit of like nature and granted an order of injunction. While doing so the learned court below also disposed of the application under Order 7 Rule 11 of the CPC. The application under Order 7 Rule 11 was disposed of in a hasty manner without dealing with the contentions of the parties.

Under such circumstances, the order impugned is modified to the extent that the order of the learned court with regard to the rejection of the application under Order 7 Rule 11 of the CPC is set aside. The learned court below shall decide the said application on its own merits on the basis of the contentions of the parties.

This court has not gone into the merits of the application filed by the defendant no. 1. The learned court below shall proceed in accordance with law. This order is being passed only because the learned court below rejected the application for rejection of the plaint without dealing with the specific points raised by the defendant no. 1 and has combined the order with the order passed in the application for injunction along with the application under Order 7 Rule 11 of the CPC. The learned court below shall dispose of the application under Order 7 Rule 11 of the CPC expeditiously within a month from the next date fixed.

The revisional application is disposed of. There shall be no order as to costs.

The learned court below shall not be influenced by any observations made hereinabove. The other portions of the order impugned shall remain unaltered.

As the main revisional application has been disposed of, connected application being CAN 1 of 2020 is also disposed of accordingly.

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.)