

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
(Via Video Conference)**

CO 30 of 2021

**Rubi Roy and others
Vs.
Partha Sarathi Roy**

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh

...for the petitioners

Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay,
Mr. Anirban Banerjee

.... for the opposite party

The circumstances of the case are a bit peculiar.

It appears, upon hearing learned counsel for both sides, that by an order dated October 6, 2020, the trial court took up the present petitioners' application under Order VII Rule 11 of the Code of Civil Procedure and in the ordering portion recorded that the same was allowed on contest. However, in the immediately preceding as well as the succeeding sentences, the Trial Judge recorded that the plaintiff was directed to file proper court fees within one month as per law and take necessary steps in respect of his plaint. Since an opportunity was given to the plaintiff to file proper court fees, the

application under Order VII Rule 11 of the Code could not have been allowed at that stage without giving the opportunity of one month, as stipulated therein, to put in the appropriate court fees. Thus, the order was contradictory and apparently erroneous insofar as the application for rejection of plaint was recorded to have been allowed.

Moreover, since the order was revisable under Section 115A of the Code of Civil Procedure in view of the fact that if the order impugned before the revisional court was passed in favour of the revisionist petitioner it would have finally decided the proceeding.

However, since by a subsequent order dated December 18, 2020, the plaint was actually rejected, the plaintiff had preferred a miscellaneous appeal against such order of rejection, which was also allowed subsequently.

Learned counsel for the petitioners submits that the petitioners have already preferred a second appeal against the order of the appellate court, whereby the appellate court set aside the order dated December 18, 2020. Without going into the question of maintainability of the second appeal, which is for the concerned Division Bench taking up the matter under Order XLI Rule 11 of the Code of

Civil Procedure to decide, there is no jurisdictional error in the order of the revisional court.

Even without going into the merits of the observations of the revisional court below, the conclusion was correct, since the trial court had recorded erroneously that the application under Order VII Rule 11 of the Code was allowed, despite having granted, in the same breath, time to the plaintiff to put in deficit court fees.

Accordingly, CO 30 of 2021 is dismissed. However, it is made clear that the merits of the order impugned in the second appeal, referred to above, have not been gone into by this court. The said second appeal, subject to maintainability, shall be taken up by the appropriate Division Bench on its own merits on the premise of the aforesaid observations.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)