

17.02.2022
Ct. 21
D/L 4
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C.O. 306 of 2022
(Via Video Conference)

Dilip Banerjee & Anr.
-Vs-
Dipak Chakrabarty & Anr.

Mr. Sanjay Mukherjee,
Mr. Dhananjoy Nayak,
... for the petitioners

Mr. Buddhadeb Ghosal,
Mr. Purnasish Gupta,
Mr. Karunasish Chakraborty,
... for the opposite parties

Mr. Sanjay Mukherjee, learned advocate appears for the petitioners and Mr. Buddhadeb Ghosal, learned advocate appears for the opposite parties.

It has been contended by the learned advocate for the petitioners that the opposite parties by suppressing about the pendency of the applications filed under Order 7 Rule 11 of the Code of Civil Procedure, under Order 6 Rule 17 of the Code of Civil Procedure and under Order 39 Rules 1 and 2 of the Code of Civil Procedure, has obtained an order in C.O. 140 of 2022 on 03.02.2022 only for expeditious disposal in respect of the application under Order 39 Rule 4 of the Code of Civil Procedure in connection with Title Suit No. 413 of 2021.

The learned advocate for the petitioners draws the attention of this Court to the order dated 07.02.2022 passed by the learned Civil Judge (Junior Division), 3rd Additional Court, Alipore, South 24 Parganas, in Title Suit No. 413 of 2021, wherefrom it is seen that indeed not only the application under Order 39 Rule 4 of the Code of Civil Procedure is pending but also the applications filed under Order 7 Rule 11 of the Code of Civil Procedure, under Order 6 Rule 17 of the Code of Civil Procedure and under Order 39 Rules 1 and 2 of the Code of Civil Procedure are still pending.

The learned advocate for the petitioners refers to the case of *Nellimaria Jute Mills Company Ltd. Vs. Rampuria Industries & Investment Ltd.*, reported at 2009(2) CLJ(CAL) 276, Where the a coordinate Bench of this Hon'ble Court has been pleased to observe as follows:

“The duty of the Court in such circumstances by holding inter alia that making of amendment is not really the matter of power of a Court but its duty, so that substantial justice may be done for which alone Courts exist. It was further held therein that as a fundamental principle, the law strongly favours an amendment where it is necessary for ends of justice and it would require the clearest language to alter the very beneficial legal principle. It was further held therein that the object of Order 7 Rule 11 is to prevent

another suit filed on the same cause of action from being barred. It was clearly held that Order 7 Rule 11 does not take away the power of the Court to allow amendment of the plaints when it discloses no cause of action.”

Therefore, the learned advocate for the petitioners submits that the application filed under Order 6 Rule 17 of the Code of Civil Procedure need to be heard first and thereafter, the application filed under Order 7 Rule 11 of the Code of Civil Procedure is to be heard. That if the learned Court below finds that the suit is maintainable, then the Court below may be directed to hear the application under Order 39 Rules 1 and 2 along with application filed under Rule 39 Order 4 of the Code of Civil Procedure.

The learned Civil Judge (Junior Division), 3rd Additional Court, Alipore, South 24 Parganas is directed to hear first the application filed under Order 6 Rule 17 of the Code of Civil Procedure within one month from the date of communication of this order and thereafter, the application filed under Order 7 Rule 11 of the Code of Civil Procedure to be heard within 15 days after the disposal of the application under Order 6 Rule 17 of the Code of Civil Procedure. If the Court finds that the suit is maintainable then hear the applications filed under Order 39 Rules 1 and 2 along with the application filed

under Order 39 Rule 4 of the Code of Civil Procedure, as expeditiously as possible and in any event, within a period of three months thereafter.

The learned Court below is also directed to take consideration this order while considering the order passed in C.O. 140 of 2022.

The revisional application being **C.O. 306 of 2022** is thus, disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, be applied for, be given to the parties, upon compliance of all formalities.

(**Kesang Doma Bhutia, J.**)