

15.06.2022
Item No.1 & 2
Ct. No.7
CHC
(disposed of)

**C.O. 637 of 2022
IA NO: CAN/1/2022**

**Dharmendra Jaiswal
Vs.
Sri Pritam Kumar Manna & ors.**

With

**C.O. 638 of 2022
IA NO: CAN/1/2022**

**Jitendra Jaiswal
Vs.
Sri Pritam Kumar Manna & ors.**

Mr. Anirban Majumder,
Mr. Somnath De
...for the petitioner in C.O.637/2022
and in C.O.638/2022

Mr. Rahul Karmakar,
Mr. Abirlal Chakravarti
...for the opposite parties

On the prayer of both the parties, both the revisional applications referred hereinabove are heard together for a common law point being involved in this case.

The subject-matter of challenge in these two (02) revisional applications is against the rejection of the prayer under Order 7 Rule 11 C.P.C.

Mr. Anirban Majumder, learned advocate appearing for the petitioner in both the above referred revisional applications submits that plaint ought to

have been rejected in aid of the provisions available under Order 7 Rule 11 C.P.C., as the suit was instituted in the representative capacity, without taking any leave from the court, what was required to be obtained to launch a representative suit.

It is contended by the learned advocate for the petitioner that the averments of the plaint would reveal that the suit seeking eviction of defendant was representative in nature. Therefore, a leave is required to be taken at the time of institution of the suit, without which the present litigation should not be allowed to be continued, and the plaint should be rejected, learned advocate for the petitioner argues.

Learned advocate for the petitioner further submits that there has been no effective hearing extended to petitioner in support of the prayer for rejection of the plaint.

Disputing with the maintainability of the suit, for the grounds referred hereinabove, learned advocate for the petitioner proposes that the plaint should have been rejected by the court below in both the cases, referred above.

Per contra, Mr. Karmakar, learned advocate appearing for the plaintiffs/opposite parties submits that the tests of Representative Suit, required to be satisfied, are conspicuously lacking in these two cases

so as to describe the litigations to have launched in representative capacity.

The grounds thus taken for rejection of the plaint are not akin to the grounds, available under Order 7 Rule 11 C.P.C. Mr. Karmakar contends.

Supporting the order of the court below, Mr. Karmakar submits that there lies nothing to be interfered with in the impugned order.

Having considered the submission of both sides, it appears that plaint has been sought to be rejected taking the grounds, for no leave having been obtained from the court, though the instant litigation has been instituted in representative capacity.

Upon perusal of the averments of the plaint in context with the affidavit, enclosed with the plaint, it appears that plaintiffs claimed themselves to be joint owners in respect of the suit premises, wherefrom the defendant has been sought to be evicted. The plaintiffs are the transferee purchasers. The prayer portion is very definite to reveal that a decree has been sought to be obtained with a prayer for recovery of khas possession in respect of the suit premises, after evicting the defendant including his men and associates from the suit premises.

Further perusal of the impugned order reveals that in the year 2019, the eviction suit was instituted and

the moment when the application for rejection of the plaint was proposed, the suit was posted for collection of evidence, and accordingly, date was fixed for cross-examination of P.W.1. Thus, it is at the stage of cross-examination of P.W.1, the defendant/petitioner suddenly woke up with a petition under Order 7 Rule 11 C.P.C. Though the prayer for rejection of the plaint, for the grounds set out under Order 7 Rule 11 C.P.C. may be made at any stage of proceeding, but ordinarily it is desirable that the proposed prayer for rejection of plaint should be made at the initial stage of litigation, after entering appearance.

The fundamental point to challenge the rejection of the plaint is relatable to a leave not being obtained from the court below, though the suit has been instituted in the representative capacity. Such point, may be best decided at the time of final hearing of suit, upon framing a necessary issue pertaining to the maintainability of the suit.

Since the proposed prayer for rejection of plaint has been made at a stage, when suit has been set for cross-examination of P.W.1, this Court is of the view that the movement of the suit should not be restricted any further. The impugned order, as such, does not call for any interference.

However, this would not prevent the court below to frame a specific issue pertaining to the maintainability of the suit, if not at all framed.

Liberty is given to petitioner to challenge the maintainability of suit on the issue, now raises, at the time of final hearing of this case.

If any objection is raised, touching the maintainability of the suit on the issue, as discussed hereinabove, the same shall be resolved giving an opportunity of hearing to other side.

Since the suit is posted for cross-examination of P.W.1, the cross-examination of P.W.1 may be resumed upon filing a separate application by the petitioner praying for recalling of the order, if any passed by the court below directing closure of the cross-examination of the P.W.1. Such exercise, by the petitioner/defendant may be made within a fortnight from hence, and cross-examination thereafter may be concluded expeditiously.

It is, however, clarified that this Court reposes trust and confidence upon the court below that logical conclusion of the suit may be reached at an earlier date, without granting unnecessary adjournment, unless it extremely unavoidable.

With this observation/direction, both the revisional applications along with connected applications stand disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)