

06.04.2022
Item No.21
Ct. No.7
CHC
(disposed of)

**C.O.679 of 2022
(Physical Hearing)**

**Baniara New Mitali Sangha & anr.
Vs.
Sri Paresh Banerjee & ors.**

Mr. Pinaki Ranjan Mitra, Sr. Advocate
Mr. Sugata Mukhopadhyay
...for the petitioners

Mr. Nilanjan Bhattacharjee,
Mr. Sanjoy Karar,
Mr. Arpan Guha
....for the opposite party
nos.1 to 3/Caveators

Petitioners assail the order dated 11th March, 2022, passed by learned Civil Judge (Junior Division), Fourth Court, Howrah in Title Suit No.301 of 2012, declining to reject the plaint under Order 7 Rule 11(d) C.P.C.

Admittedly, the suit was instituted in 2012 and in connection therewith defendants entered their appearance by filing written statement on 18th May, 2013. The prayer for rejection of the plaint came to be filed by petitioners/defendants in March, 2022, when the case was posted for cross-examination of P.W.1.

Mr. Mitra, learned Senior Advocate appearing for the petitioners/defendants submits that the plaint is liable to be rejected for non disclosure of the cause of action in the plaint.

While making elaboration of such issue, learned advocate for the petitioners submits that some fictitious dates have been disclosed in paragraph '12' of the plaint, which has no reasonable proximity with other paragraphs referred in the plaint.

Per contra, Mr. Bhattacharjee, learned advocate representing Caveators/opposite parties submits that cause of action has been disclosed furnishing several dates vide paragraph '12' of the plaint and which has reasonable nexus with paragraph '8' of the plaint.

It is contended by learned advocate for the opposite parties that the instant application for rejection of the plaint is very purposive and simply to drag the proceeding.

The learned trial court has considered all the averments contained in the plaint to find out the cause of action for the plaint.

Upon consideration of all the averments in the plaint in its entirety, the learned trial court has come to a definite finding that cause of action has been sufficiently disclosed in the plaint, and such findings, being a product of reasonable exercise of judicial discretion, would must go unaltered. The impugned order does not call for any interference.

However, when the case is posted for cross-examination of P.W.1, liberty is given to learned advocate for the petitioners/defendants to agitate the

point, now raises, at the time of final hearing of this case, and if such point is raised at the time of final hearing of the suit, the same may be resolved providing sufficient opportunity of hearing to either of the parties to this case, in accordance with the provisions of the law.

With this observation/direction the instant revisional application stands 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.)