

26.04.2022
Item No.14
Ct. No.7
CHC
(disposed of)

**C.O.691 of 2022
(Physical Hearing)**

**Mahadeo Buisiness Centre Pvt. Ltd.
Vs.
Amiya Chorone Roquitte**

Mr. Sukanta Chakraborty,
Mr. Swarup Saha
...for the petitioner

Mr. Rajesh Upadhyay,
Mr. Meghnad Dutta,
Mrs. Surabita Biswas
...for the opposite party

The subject-matter of challenge in this revisional application is against the rejection of prayer under Order 7 Rule 11 C.P.C.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that jurisdiction of the Court has been purposefully created overvaluing the damages and mesne profits, which has no reasonable basis.

Admittedly, in this eviction suit, besides claiming recovery of khas possession in respect of the suit premises, there has been a prayer for recovery of damages to the extent of Rs.5,00,000/- (Rupees Five Lakhs only) mesne profits to the extent of Rs.1,12,500/-(Rupees One Lakh Twelve Thousand Five Hundred only), which according to the petitioner has

been assessed by the landlord/opposite party without disclosing the break up and the basis, from which such amount was assessed.

Upon referring Section 12A of the West Bengal Premises Tenancy Act, 1997 read with Schedule IV thereunder, Mr. Chakraborty contends that the instant suit, instead of City Civil Court, ought to have been filed before Presidency Small Causes Court.

According to Mr. Chakraborty, in the event of suit being allowed to be decided by the City Civil Court, decree, if any granted, would be a nullity being without any jurisdiction.

Per contra, Mr. Dutta, learned advocate appearing for the opposite party/landlord submits that the suit property, reference of which has been specifically disclosed in the schedule to the plaint, is situated in commercial area.

To challenge the contention of Mr. Chakraborty, a reference to paragraphs 2, 4, 10 and 13 is drawn to the attention of the Court by Mr. Dutta.

Upon referring such paragraphs of plaint, Mr. Dutta submits that the court below had already gone into such points, and it is not a case, as alleged to have been overvalued so as to create jurisdiction purposefully.

In reply to the submission of Mr. Dutta, Mr. Chakraborty submits that petitioner would loose the

forum in the event of suit being decided by the City Civil Court. More so, there has been no pleading disclosed as regards the foundation of quantitative assessment of damages and mesne profits, said to have been recovered.

Having considered the submission of both sides, it appears that the jurisdictional issue together with absence of materials revealing the quantitative assessment of damages and mesne profits are subject of challenge in aid of an application under Order 7 Rule 11 C.P.C. The court below while rejecting the prayer for rejection of the plaint was not oblivious that opposite party/plaintiff may proceed with the suit upon his own valuation, unless there are reasons disclosed for holding the same to be ridiculous, arbitrary and unreasonable.

The claim for damages and mesne profits is always subject to proof, and for which, evidence is compulsorily required to be adduced by the party claiming such reliefs. Mere claim of damages and mesne profits without any evidence being adduced will not automatically entitle the opposite party/plaintiff to have those reliefs. It is thus dependent on quality of evidence to be adduced on such issues.

It is also gathered knowledge that in a previously instituted suit, the same point was challenged by

petitioner, and it was answered in C.O. No.1409 of 2015 upon rejecting the prayer of the petitioner.

The Court has already fixed date for framing of issues. That being the position, though there has been rejection of a prayer under Order 7 Rule 11 C.P.C, but that would not prevent the court below to frame a specific issue pertaining to the maintainability of the suit along with other issues to be framed for the purpose of adjudication of matter in controversy, as surfaced in the pleadings.

The revisional application is thus disposed of directing the court below to frame a specific issue pertaining to maintainability of the suit, and the point now raises by petitioner, as regards overvaluation of the suit and the purposeful creation of jurisdiction of court, may be agitated once again in connection with decision of issue so framed for the purpose, taking help of evidence.

Petitioner is at his liberty to challenge the claim of the opposite party with regard to claim of damages and mesne profits doing necessary cross-examination for the purpose.

Let the court below to decide such maintainability issue at the time of final hearing of suit.

With this observation/direction, the 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.)