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C.O. 1484 of 2022

**Amar Kumar Halder
Vs
Nilima Paul & Ors**

Mr. Sanjay Mukherjee, ... For the petitioner.

The subject matter of challenge in this revisional application is against the rejection of a prayer under Order 7 Rule 11 of the Code of Civil Procedure.

Learned advocate appearing for the petitioner taking recourse to the disclosure of written statement filed by the petitioner in para 18 of the written statement submits that when petitioner being defendant emphatically denies the relationship being descendant of original tenant Ajit Kumar Basu, and when there has been contradictory stand taken, revealed in paragraph 5 and 6 of the plaint, the present suit should not be proceeded further, and the plaint should have been rejected upon attracting the provision available under Order 7 Rule 11 (d) of the CPC.

It is contended by the learned advocate for the petitioner that the Court below rejected the prayer under Order 7 Rule 11 of the CPC, principally, on the ground that the same was not taken even before the filing of the written statement.

As regards the other points considered by the Court below are non production of some documents relatable to the rejection of a plaint as proposed by the petitioner, together with absence of the grounds mentioned in Order 7 Rule 11 of the CPC.

It is settled proposition of law that rejection of plaint for the grounds mentioned in Order 7 Rule 11 CPC may be taken out at any stage of the proceeding, but ordinarily it is desirable to be filed immediately upon entering appearance in the suit. Merely for filing a petition under Order 7 Rule 11 of the CPC, subsequent to filing written statement cannot itself be a ground of rejection of prayer Under Order 7 Rule 11 CPC.

In the paragraph 19 of the written statement, there has been specific disclosure, wherein petitioner/defendant emphatically denies his any relationship with original tenant, Ajit Kumar Bose (since deceased).

There is also disclosure in para 24 of the written statement, wherein reliance upon some documents has been specifically disclosed. It is thus clear that defendants are backed by some documents favourable to the defence being set up in para 19 of the written statement. Plaintiff/opposite parties as per para 5 of the plaint, are conscious that petitioner/defendant has no relationship with Ajit

Kumar Basu.

The rejection of the prayer under Order 7 Rule 11 CPC is thus not upon due consideration of the facts disclosed in the written statement in context with the averments incorporated in the plaint, particularly, para 5 and 6 of the plaint.

In a situation like this, if the matter is relegated to the trial Court for decision afresh, the same will cause further delay to the disposal of the suit. When petitioner/defendant has already furnished written statement and there is no interlocutory application pending requiring decision to be rendered by the Court, the defence set up by the petitioner particularly challenging the relationship, as mentioned hereinabove, may be best decided upon holding a trial. While holding such trial, irrespective of the rejection of Order 7 Rule 11 CPC, the Court below may frame a specific issue pertaining to the maintainability of the suit together with the alleged disputed relationship between the parties in context with para 5 and 6 of the plaint together with disclosure made in para 13, 19 and 24 of the written statement.

Such issues, if framed, may be decided at the time of final hearing of suit after looking into the evidence adduced by the parties to this case.

Since relationship between the parties being

disputed one in connection with an eviction suit, taking the grounds available under Section 2g of the Premises Tenancy Act, the pending suit may be expeditiously disposed of, providing sufficient opportunity of hearing to either of the parties to this case, subject to his suitability and convenience, but without granting unnecessary adjournments, preferably within a period of one year from the date of communication of this order.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)