

11.08.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.1579 of 2022

**Shri Soumen Chatterjee @ Soumen Chandra
Chatterjee
Vs.
Ram Mohon Paul**

Mr. Purnendu Das,
Mr. K. K. Baral

...for the petitioner

Mr. Buddhadeb Ghosal

...for the opposite party

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

Mr. Purnendu Das, learned advocate appearing for the petitioner/defendant submits that though the suit has been instituted for specific performance of the contract, but in the case at hand, there has been no concluded contract between the parties.

It is also submitted by the learned advocate for the petitioner that in the absence of a concluded contract, the claim for specific performance of contract may not be enforced, and in that view of the matter the suit may not be proceeded further.

Mr. Das, learned advocate appearing for the petitioner frankly submits that the points taken in

support of the prayer for rejection of the plaint are not covered under the grounds available under Order 7 Rule 11 C.P.C., but it attracts the maintainability of the suit.

Per contra, Mr. Ghosal, learned advocate appearing for the opposite party/plaintiff submits that the petitioner has not yet filed written statement adhering to the provisions available under Order 8 Rule 1 C.P.C. even after prayer for rejection of the plaint being rejected by the court below, and as such, the pending suit has already been set for *ex parte* hearing.

Mr. Ghosal, learned advocate appearing for the opposite party/plaintiff further contends that the entire endeavour of the petitioner, as exercised, is nothing but to cause delay to the disposal of suit, and it is purely harrasive one.

Upon perusal of the impugned order, it appears that whether there has been a concluded contract, or not between the parties, so as to claim specific performance of contract, is a matter relatable to adjudication by the court below at the time of final hearing of suit.

The points taken in support of the prayer for rejection of the plaint do not attract any of the provisions available under Order 7 Rule 11 C.P.C. Whether there has been concluded contract or not so as to make specific enforcement of the contract may be

decided at a later stage upon framing issues, if needed in accordance with the law.

The impugned order does not call for any interference.

The revisional application, is, thus, disposed of.

This would not, however, prevent the court below from framing additional issues, if any, upon seeing the defence, set up in the written statement in accordance with the law.

This Court has not gone into the merits as regards *ex parte* hearing of suit, if any already set for.

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.)