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C.O. 1594 of 2022

**Seema Bhowmick & Anr
Vs
Pravati Dey**

Mr. Kaushik De,
Mr. Debdipto Banerjee, ... 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 filed by the defendants.

Admittedly, this is a suit for eviction, wherein petitioners/defendants/tenants admitted the rate of rent, but disputed with the annual valuation of the suit property alleging that the mesne profits had been mentioned at an inflated rate simply to create jurisdiction of the Court.

No other point is raised requiring address by this Court.

Upon perusal of the impugned order, it appears that the Court below while making rejection of prayer under Order 7 Rule 11 CPC made observation to the effect "that the issues involved in the suit related to questions of fact and law interlinked together, which cannot be decided without undertaking a trial". It was further observed by the Court below that "whether the court fee was properly paid or not, the same was left open to be decided at the appropriate stage of

proceeding”.

Learned advocate for the petitioners to facilitate decision of this case produces the copy of the plaint. Let the same be kept with the record.

Upon perusal of the averments contained in the plaint, it appears that the cause of action, which is a *sine qua non* for the institution of the suit, has been vividly disclosed in the relevant averments contained in the plaint.

An order attempting to address the issue raised in this case after undertaking a trial on the ground that the same being intermingled with the question of fact and law, and that order being a product of appropriate exercise of jurisdiction vested to the Court below, the same cannot be regarded to be perverse.

Ordinarily, in a suit for eviction, an issue is framed pertaining to the maintainability of the suit.

The point thus raised would, however, attract the maintainability of the suit.

This would not however, prevent the Court below from framing a specific issue pertaining to the maintainability of the suit, if not already framed.

Petitioners are given liberty to agitate the points now raised at the time of final hearing of the suit pertaining to the determination of the issue of maintainability of the suit, irrespective of the

rejection of the prayer under Order 7 Rule 11 of the CPC, and all such points to be raised by the petitioners, may be resolved, providing an opportunity of hearing to other side in accordance with provisions of law.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite party and the opposite party.

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)