

14 24.06.
2022
AGM
/RKB
Ct
07

C.O. 1730 of 2022

**Swastic Projects Private Limited
Vs
Sri Samirendra Nath Dutta & Ors**

Mr. Abhrajit Mitra, Sr. Adv,
Mr. Jishnu Chowdhury,
Mr. B. N. Joshi,
Mr. Varun Kothari,
... For the petitioner.

Mr. Sanjib Kumar Mal,
Mr. Atanu Roy Chowdhury,
... For the opposite parties.

Mr. Abhrajit Mitra, learned Senior advocate appearing for the petitioner assails the order dated 18th May, 2022 passed by learned Judge, Commercial Court, Alipore in Money Suit No. 16 of 2022 submitting that prior to returning any decision in connection with a prayer under Order 7 Rule 11 of the Code of Civil Procedure, there cannot be any findings reached by the Court below holding the suit to be maintainable.

Upon advertent to paragraph 12 of the impugned order, Mr. Mitra submits that when there has been a direction to file affidavit-in-opposition by the opposite parties in connection with a prayer for decision under Order 7 Rule 11 CPC, in the interregnum period, there should not be any findings reached by the Court below holding the suit to be maintainable. Such findings of the Court below is purely contrary to law, as the pending petition under Order 7 Rule 11 of the CPC has been

rendered infructuous.

Paragraph 11 of the impugned order reveals that the Court below has already declared the suit to be maintainable, and in the subsequent paragraph directed the opposite parties to file affidavit-in-opposition against the prayer under Order 7 Rule 11, meaning thereby the application for rejection of plaint was kept pending.

That being the position, such order of the Court below holding the suit be maintainable prior to returning any decision under Order 7 Rule 11 of the CPC is purely contradictory one.

Mr. Sanjib Kumar Mal, learned advocate appearing for the opposite parties has no objection, if the matter is decided afresh by the Court below in connection with prayer under Order 7 Rule 11 of the CPC in particular.

The maintainability of this revisional application is also not under challenge in this case, as per submission disclosed by the learned advocate for the opposite parties.

That being the position, the revisional application stands disposed of upon setting aside the impugned order directing the Court below to dispose of the prayer under Order 7 Rule 11 of the CPC, read with petition challenging maintainability of suit, providing sufficient opportunity of hearing to either of the parties to this

case, but without granting unnecessary adjournments, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned court below.

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)