

22.07.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.2042 of 2022

M/s. Leonine Abode Private Limited & ors.

Vs.

M/S NKS Project (P) Limited & ors.

Mr. Debnath Ghosh,
Mr. Srijib Chakraborty,
Mr. Aditya Mondal

...for the petitioners

Mr. Sanjoy Bose,
Mr. P. B. Mullick

...for the opposite parties

The subject-matter of challenge in this revisional application is against the order dated 20th June, 2022, passed by learned Civil Judge (Senior Division), 4th Court, Alipore, South 24 Parganas, in Title Suit No.818 of 2018, fixing date for hearing of an application under Order 7 Rule 11 C.P.C.

Admittedly, this is a suit for partition, in which defendants filed an application under Order 7 Rule 11 C.P.C. on 23rd March, 2021. Likewise, the plaintiffs filed an application seeking amendment of the plaint on 19th June, 2022 for some clerical mistakes having occurred in the schedule of the plaint.

Mr. Ghosh, learned advocate appearing for the petitioners submits that application for amendment

should be heard out, and disposed of first deferring the hearing of application under Order 7 Rule 11 C.P.C.

Disputing with the contention raised by the learned advocate for the petitioners, Mr. Bose, learned advocate appearing for the opposite parties submits that application for rejection of the plaint was filed much earlier in point of time, than the application seeking proposed amendment.

The controversy thus surfaced between the parties is which of these two applications should be heard out and disposed of first. Parties, however, are ad idem that both the interlocutory applications have to be disposed of in accordance with the provisions of law.

Upon perusal of the impugned order, it appears that neither the application for rejection of the plaint, nor the proposed amendment application has been disposed of by the order impugned. By the order impugned, the court has simply fixed the date on 19th July, 2022, for hearing of application under Order 7 Rule 11 C.P.C.

That being the position, no further elaboration is considered necessary, and the instant revisional application is disposed of directing the court below to hear out the application for rejection of the application under Order 7 Rule 11 C.P.C. together with the prayer for proposed amendment under Order 6 Rule 17 C.P.C.

together either on the date scheduled for hearing or if for any reason whatsoever the same could not be done, the same may be done peremptorily within fortnight thereafter providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

The impugned order is thus modified to the extent made hereinabove.

All points are thus left open for decision by the trial court, and this order is passed without going into the merits of the case, and without prejudice to the rights and contentions of the parties.

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.)