

12.09.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.2060 of 2022

Sri Dipak Kumar Paul & anr.
Vs.
Subhadra Mondal & anr.

Mr. Pradip Kumar Datta,
Ms. Soumashree Dutta
...for the petitioners

Mr. Malay Kumar Das,
Mr. Sourav Sen
...for the opposite party no.1

Mr. Kartick Kumar Bhattacharyya
...for the opposite party no.2

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

Learned advocate appearing for the petitioners submits that rejection of plaint was proposed fundamentally taking into account that the suit was undervalued.

Admittedly, this is a suit, wherein a declaration has been sought for to render a deed, dated 21st April, 2021, to be null and void, and not binding upon the plaintiff.

Mr. Pradip Kumar Datta, learned advocate appearing for the petitioners submits that the court below has improperly reached the decision, while making consideration of a prayer under Section 7 Rule

11 C.P.C., and the suit should not have been proceeded further.

It is also submitted that the reliance of a decision referred in the impugned order by the court below is not proper, and it has no reference to the prayer proposed, particularly to the grounds taken in connection with the prayer for rejection of plaint under Section 7 Rule 11 C.P.C.

Learned advocates appearing for the respective opposite parties adverting to paragraph-‘22’ of the copy of the plaint, annexed with the instant revisional application, submits that the court below has rightly decided the petition, and submit conjointly that in context with the prayer proposed, there has been sufficient court fees deposited to obtain proposed declaration. It is thus submitted that the impugned does not require any interference.

Having considered the submission of both sides, it appears that undervaluation of suit is only under challenge in this case amongst others.

As per submission disclosed by the petitioners, written statement has already been filed in the court below. That being the position, the issue raised by the petitioners may be best decided upon framing issue pertaining to the maintainability of the suit, irrespective of the findings reached by the order impugned. Ordinarily, in a suit, seeking declaration,

an issue pertaining to the maintainability of the suit is always framed.

The point raised may be best decided in context with the evidence to be adduced by the parties to this case, and also during the final hearing of the suit.

The revisional application is thus disposed of directing the court below to frame a specific issue pertaining to the maintainability of the suit, while framing issues relatable to the instant case. Both the parties to this case are at their liberty to adduce their respective evidence, so that the issue raised in this case may be decided in aid of evidence to be adduced by both the parties in this case.

Since an injunction application is submitted to be pending , this order would not prevent the court below to ensure expeditious disposal of the injunction application, without granting unnecessary adjournment, unless it is extremely unavoidable.

Parties are directed to make communication of this order to the court below.

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.)

