

04.11.2022
Item No.24
Ct. No.7
CHC
(disposed of)

C.O.2193 of 2022

Rash Bihari Mondal & ors.

Vs.

Smt. Munna Das & ors.

Mr. Tarak Nath Halder

...for the petitioners

Mr. Dyutimoy Paul

...for the opposite parties

Mr. Halder, learned advocate appearing for the petitioners, assails the impugned order dated 24th June, 2022, passed in Title Suit No.107 of 2011, by learned Civil Judge (Junior Division), First Court, at Sealdah, South 24 Parganas, setting the application for rejection of plaint for hearing first, than the application for amendment filed by the petitioners.

Admittedly, this is a suit for declaration and injunction. The fundamental grievance raised in the pleadings is that there has been attempt raised by the opposite parties to initiate construction on the common area purchased by some flat owners. In the meantime, the opposite parties/defendants have filed an application for rejection of the plaint on 5th February, 2019. Subsequent to the filing of petition for rejection of the plaint, another application under Order 6 Rule 17 C.P.C. proposing amendment was also filed by the petitioners/plaintiffs.

Mr. Halder, learned advocate appearing for the petitioners submits that proposition of law is quite clear that application for amendment should be decided first prior to returning any decision on the point of rejection of plaint under Order 7 Rule 11 C.P.C.

Per contra, Mr. Dyutimoy Paul, learned advocate appearing for the opposite parties submits that application for amendment was filed long after the filing of petition for rejection of the plaint.

It is thus proposed by the learned advocate for the opposite parties that the petition for rejection of the plaint should be decided first, as there are sufficient materials disclosed in the petition for rejection of the plaint, which would justify no further movement of the instant litigation.

Upon perusal of the proposed schedule of amendment, it appears that some factual details have been sought to be incorporated in the plaint, while in the petition for rejection of the plaint, it was disclosed that there has been non-implication of necessary parties, and the litigation has been instituted by some unregistered bodies. The petition under Order 7 Rule 11 C.P.C. contains another prayer under Order 1 Rule 8 C.P.C.

Upon referring the contents of the petition under Order 7 Rule 11 read with Order 1 Rule 8 C.P.C.,

learned advocate for the opposite parties submits that there should be some precedence given to the hearing of petition under Order 7 Rule 11 C.P.C. in view of the materials disclosed in the petition.

Having considered the submission of both sides, it appears that fight between the parties is with respect to a solitary question as regards which of these two interlocutory petitions, filed by the parties to this case each, should be decided first.

Upon perusal of the impugned order, it appears that the court below proceeded to fix the hearing of petition under Order 7 Rule 11 C.P.C., since it was filed long before the filing of amendment petition.

There cannot be any controversy that amendment application, if filed, even in presence of a petition proposing rejection of the plaint, should be decided first.

The settled proposition is also clear that for defects of the parties a suit should not be dismissed before giving any opportunity to take appropriate steps for addition of the necessary parties, if there be any.

For the discussions made hereinabove, and in view of the peculiarity of the circumstances, disclosed in the submission of both the parties, it would be appropriate to hear out the amendment application along with application for rejection of the plaint together, and if these two petitions are decided giving a common

hearing that would not cause any prejudice to either of the parties to this case, and rather it would subserve the purpose of justice.

The revisional application is thus disposed of upon setting aside the impugned order with a direction upon the court below to hear out the amendment application read with application for rejection of the plaint together either on the schedule date already fixed by the court below, or if for any reasons whatsoever, the same could not be done, both the applications should be taken up peremptorily, and disposed of providing sufficient opportunity of hearing to either of the parties to this case, before the end of January, 2023.

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

This order is passed without going into the merits of both the pending interlocutory applications, 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.)