

14.12.2022
Item No.12
Ct. No.7
CHC
(disposed of)

C.O. 2859 of 2022

Smt. Usha Rani Chowdhury & ors.

Vs.

Sri Vivek Prahladkar & ors.

Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Ms. Sayoni Ahmed

...for the petitioners

Mr. Roy, learned advocate appearing for the petitioners, while assailing the order dated 3rd August, 2022, passed in Title Suit No.634 of 2022 by learned Civil Judge (Senior Division), 2nd Court, at Barasat, North 24 Parganas, submits that the court below has fixed for hearing of injunction application along with an application under Order 7 Rule 11 C.P.C. together, which is not proper.

Reliance is placed by Mr. Roy on a decision reported in **(2016) 14 Supreme Court Cases 275** delivered in the case of ***R. K. Roja vs. U. S. Rayudu and another*** to submit that once an application is filed under Order 7 Rule 11 C.P.C., the court has to dispose of the same at the earliest, and that too before proceeding with the trial.

It is thus proposed by Mr. Roy that if Order 7 Rule 11 C.P.C. succeeds, the hearing of injunction application may become infructuous, and as such,

there should be some precedence given to the hearing of an application under Order 7 Rule 11 C.P.C.

Upon perusal of the impugned order, it appears that the court below was cognizant about the pendency of an injunction application coupled with an application filed by the petitioners/defendants under Order 7 Rule 11 C.P.C. seeking rejection of the plaint.

Admittedly, there has been no injunction granted as yet, for a Caveat being lodged by the petitioners/Caveators to the court below against the injunction application.

Once an application is filed under Order 7 Rule 11 C.P.C., no doubt the court has to dispose of the same at the earliest, but the only restriction is that hearing of such application must be completed before proceeding with the trial.

Therefore, no further elaboration is necessary.

The revisional application stands disposed of directing the court below to give a common hearing, while addressing both the applications pertaining to injunction application, and rejection of the plaint, providing sufficient opportunity of hearing to either of the parties to this case.

It is, however, clarified that while endeavouring such exercise, the point in issue raised in connection

with Order 7 Rule 11 C.P.C. may be adequately addressed while making dispensation of justice to the parties.

With this observation/direction, the revisional application stands disposed of.

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

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.)