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C.O. 1570 of 2020

**Abeda Khatoon
Vs
AIR INDIA LIMITED (erstwhile Indian Airlines
Corporation)**

Mr. N. C. Bihani,
Mr. Gour Baran Sau, ... For the petitioner.

Ms. Sayani Roy Chowdhury,
... For the opposite party.

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

Mr. N. C. Bihani, learned advocate appearing for the petitioner submits that the Trial Court is not permitted to enter into the issue touching the suit property, which is Wakf property. It is thus submitted by Mr. Bihani that subject property being wakf one, regular Court is not authorised to entertain the suit, what is triable by Wakf Tribunal, and not the regular Court.

Ms. Sayani Roy Chowdhury, learned advocate appearing for the opposite party supporting the order of the Court below submits that points raised in the application under Order 7 Rule 11 of the CPC have been answered by the Court below, and the Court has already disposed of the application declining to reject the plaint giving independent reasons therefor.

Having considered the submissions of both the sides, it appears that the maintainability of the suit pending before the Court below is the only issue raised in aid of Order 7 Rule 11 of the CPC.

As per submission disclosed by Mr. Bihani, written statement has already been submitted wherein specific defence has been taken describing the suit property to be a Wakf property along with other points disclosed in the written statement.

When there has been a specific averment taken in the written statement describing the property to be a Wakf one, the Court is of the view that the points raised in this revisional application may be best addressed upon framing a particular issue pertaining to the maintainability 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 and decide the issue along with other issues, at the time of final hearing of the suit, upon collecting the evidence to be adduced during the trial by both the parties to this case.

The Court below is further directed to address the points to be raised by the petitioner touching the maintainability of the suit as per the defence disclosed in the written statement, and the point so raised will be resolved by the Court below giving

hearing for the purpose at the time of final hearing of the suit.

The issue pertaining to the maintainability may be answered taking aid of evidence, to be adduced by the parties to this Court, irrespective of the decision already reached by the Court below under Order 7 Rule 11 of the CPC.

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)