

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.34 of 2022

Malabika Mohapatra & Anr.

....

Petitioner(s)

Mr. S. Ray,
Advocate

-versus-

***Charulata Mohanty @ Khuntia &
Ors.***

....

Opposite Party(s)

Mr. M.K. Mishra,
Sr. Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
24.02.2022**

Order No.

- 04.
1. Short question remains for adjudication of this Court is; when the revisional authority in exercise of power U/s.115 of C.P.C considered a dispute involving rejection of an application U/o. 7 rule 11 of C.P.C, whether while interfering in the order involving an application under Order 7 rule 11 of C.P.C it has power to reject the plaint?
 2. Considering the submissions of respective counsel, this Court finds, in deciding similar nature of case this Court itself in the case of *Million Develope Vs. Frost Internatio* as reported in 2016(I) ILR-CUT.775 considered very same issue and in deciding the said case taking into account a previous decision of this Court reported in

VOL. 33 (1991) OJD 228 (Civil) and also 96 (2003) CLT 323 in paragraph no.10 therein has come to hold as follows :

“Looking to the settled position of law already given by this Court as referred to hereinabove, this Court finds force in the submission of learned counsel for the petitioner to the extent that the Revisional Authority has a limited role in the matter of hearing on rejection of an application under Order 7 Rule 11 of C.P.C. and in the event, it feels that there is some substance in considering the application under Order 7 Rule 11 of C.P.C., then the Revisional Authority is to remit the matter back to the Original Authority for fresh consideration of the matter.”

3. For the above decision of this Court even taking care of previous decisions of this Court, this Court finds, question hereinabove has been answered observing that in the event the revisional authority comes to decide against the trial court involving consideration of an application U/o.7 rule 11 of C.P.C. exercising power under Section 115 of C.P.C, it has limited jurisdiction to the effect while reversing the trial court orders, it has to remit the matter back to the original authority for fresh consideration of the application U/o.7 rule 11 of C.P.C. and not otherwise. Keeping in view the settled position of law laid down by this Court involving the particular issue, this Court in examining the impugned order finds, even though the revisional court came to hold the order dated 1.09.2018 passed in C.S. No.449 of 2018 involving application U/o.7 rule 11 of C.P.C as bad and set aside, but for the settled position of law it should not have rejected the plaint itself. This Court, therefore, interfering in the later part of the order involving rejection of the plaint to that extent only in the impugned order, sets

aside only the rejection of plaint part. Thus while confirming the order in the interference in the order of the trial court so far it relates to reversal of the trial court's order in remand of proceeding vide Order 7 Rule 11 of C.P.C. involving the suit involved, this Court directs the trial court for re-adjudication of the dispute involving the application U/o.7 rule 11 of C.P.C., but however involving the parties involved herein.

4. Both the parties are directed to appear before the trial court with a copy of this order on 7th March, 2022 and take the date of hearing of the application U/o.7 rule 11 of C.P.C. Looking to the loss of time in between, this Court also directs the trial court to complete the exercise following the direction of this Court within a period of two months from the date of appearance of the parties.

5. With the aforesaid direction the Civil Miscellaneous Petition stands disposed of.

(Biswanath Rath)
Judge