

02.03.2023
SL No.31
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

C.O. 379 of 2022

**Sri Soumik Ray & Anr.
Vs.
Mr. Madhuri Pal Chowdhury & Ors.**

Mr Soumabho Mukherjee
..... for the petitioners.

This revisional application has been filed by the defendant-petitioner under Article 227 of the Constitution of India challenging order dated 18 January 2022 passed by learned Civil Judge (Senior Division), 2nd Court, 24-Paragans (North), Barasat in Title Suit no. 454 of 2020 rejecting the application filed by the defendant-petitioner under Order VII Rule 11 of the Civil Procedure Code.

The brief fact of the case is that plaintiffs-opposite parties filed a suit for ejectment, recovery of possession, declaration and mesne profit against the defendant-petitioner being Title Suit no. 454 of 2020 before learned Civil Judge (Senior Division), 2nd Court, 24-Paragans (North), Barasat. In the said Suit the defendant-petitioner filed an application under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint on the contention that the predecessor-in-interest of the plaintiffs did not have the right to sub-let the suit premises in favour of any third party and by entering into leave and

license agreement the predecessor-in-interest of the plaintiffs have violated the provisions of law in respect of property lying within the Saltlake Authority and vested with the Government of West Bengal. Upon hearing the said application for rejection of plaint was rejected by the learned trial court, hence this revisional application.

Mr Soumabho Mukherjee, learned advocate for the petitioners submits that the suit filed by the plaintiff is barred by law. He further submits that the predecessor-in-interest of the plaintiffs namely Mr Mrinal Mohun Pal Chowdhury inducted the defendant-petitioner under a leave and license agreement in the suit property with effect from 1st September 2018, where the defendant-petitioner was running his office. Although the agreement for extension of period of license was prepared but before its execution said Mr Mrinal Mohun Pal Chowdhury expired. However, the defendant-petitioner continued to tender the amount of license fees to the plaintiffs, being the legal heirs of said Mr Mrinal Mohun Pal Chowdhury. In spite of such payment, all of a sudden the plaintiffs tried to forcibly evict the defendant from the suit property. The defendant initiated a separate suit for declaration and permanent injunction being Title Suit no.93 of 2020 before the learned Civil Judge (Junior Division) at Bidhanagar. The learned trial

court ought to have allowed the application of defendant-petitioner for rejection of plaint in Title Suit no. 454 of 2020 filed by opposite parties, since after promulgation of Commercial Courts Act the learned trial court lacked jurisdiction to entertain the suit. Accordingly, such order requires to be set aside.

Having heard the learned advocate for the defendant-petitioner it is found that the petitioner has raised the issue as to whether the learned trial court was justified in rejecting the application under Order VII Rule 11 of the Civil Procedure Code.

In order to appreciate the issue involved in the present revisional application it will be apposite to reproduce the relevant provisions embodied under Order VII Rule 11 of the Civil Procedure Code which is reproduced hereunder.

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9. Provided that the time fixed by the court for the correction of the valuation or supplying of the

requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

Bearing in mind the aforesaid provisions of law, it is trite law that plaint cannot be rejected on the basis of allegations made by the defendant in the written statement or in an application for rejection of plaint. The court has to read the entire plaint as a whole and if it comes under the situations covered by Order VII Rule 11 (a) to (f), the same shall be rejected. Nothing in the plaint has been indicated during hearing to suggest that it does not disclose any cause of action. From the averments in the application it manifest that defendant-petitioner has raised the issue that the suit is barred by law since the predecessor-in-interest of the plaintiffs did not have the right to sub-let the suit premises in favour of any third party and by entering into leave and license agreement the predecessor-in-interest of the plaintiffs have violated the provisions of law in respect of property lying within the Saltlake Authority and vested with the Government of West Bengal. However, no provisions of law is stated which expressly bars the suit. Section 9 of the Code empowers the civil courts to try all suits of civil nature unless expressly or impliedly barred by any statute. The ground raised in the application for

rejection of the plaint is mixed question of fact and law. Learned advocate for the defendant-petitioner at the time of hearing has the raised the issue of trial court lacking jurisdiction after coming into force of Commercial Courts Act. However it is pertinent to note that no such ground has been taken in the application for rejection of plaint. Be that as it may, jurisdictional issue, if any, can be taken up at the appropriate stage of proceeding. In view of the above, the impugned order of the learned trial court rejecting the application of the defendant-petitioner under Order VII Rule 11 of the Code does not call for interference.

Accordingly, the revisional application being **C.O 379 of 2022** stands dismissed.

All connected applications, if any, stand disposed of.

Urgent photostat copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)