

Item No. 12
15.06.2023
Court. No. 19
GB

C.O. 1077 of 2023

Magnet Construction Pvt. Ltd. & Anr.
Vs.
Abul Kalam & Ors.

*Mr. Haradhan Banerjee,
Md. Nurul Haque,
Mr. Manabendra Thakur,
Sk. Afrojul Haque,
Mr. Bamkim Sarkar*

...for the Petitioners.

*Mr. Sandip Ghose,
Mr. Partha Chakraborty,
Mr. Subrata Das,
Mr. Debayan Ghosh,
Ms. Poulomi Dutta*

...for the Opposite Parties.

The revisional application is directed against an order dated March 27, 2023 passed by the learned Additional District Judge, 7th Court at Alipore, District – 24 Parganas (South) in Misc. Appeal No.55 of 2023. By the order impugned, the learned lower appellate court refused to stay all further proceedings in the Misc Appeal.

According to the learned lower appellate court, the learned trial judge was at liberty to decide the Order 7, Rule 11 application filed by the petitioners on its own merits and the appellate court could not be invited to look into the merits of the said application for rejection of the plaint in order to stall the Misc Appeal.

The plaintiffs filed a suit for declaration. An application for injunction was also filed. The said application for temporary injunction was rejected by allowing an application under Order 39, Rule 4 of the Code of Civil Procedure filed by the petitioners/defendants in the said suit.

Misc Appeal was preferred and a prayer for injunction was made. The petitioners filed an application under Section 151 of the Code of Civil Procedure praying for stay of all proceedings in the Misc Appeal until the application for rejection of the plaint was disposed of by the learned trial court. The said application also rejected. Aggrieved this revisional application has been filed.

Mr. Banerjee, learned advocate appearing on behalf of the petitioners submits that if the lower appellate court was allowed to decide the application for injunction and the Misc Appeal, such order will prejudice the application under Order 7, Rule 11 of the Code of Civil Procedure.

According to Mr. Banerjee, while deciding the issue of injunction, a court is normally required to decide the *prima facie* case, maintainability, balance of convenience and inconvenience, and irreparable loss and injury. While deciding these factors, the court normally tends to decide the merits of the suit. Thus, Mr. Banerjee submits that if the appeal court while deciding the injunction application filed in the said appeal on merits passes a favourable order, in that event, the learned trial court will be influenced by the observations made by the learned lower appellate court and the same will preclude a fair, independent and impartial decision in the application under Order 7, Rule 11 of the Code of Civil Procedure.

The learned advocate for the plaintiffs opposes such prayer and submits that these two proceedings are independent of each other and the learned court will decide the application under Order 7, Rule 11 of the Code of Civil

Procedure on its own merits. The injunction application filed in the misc. appeal as also the misc. appeal will be decided on an entirely different concept of law and set of facts.

Having heard the learned advocates of the parties, this Court is of the view that the learned lower appellate court rightly rejected the application for stay. The learned lower appellate court was of the view that the merits of the application under Order 7, Rule 11 of the Code will be decided independently by the learned trial judge and the appeal which arises out of refusal to grant a temporary injunction, must continue on its own merits. This was the correct approach.

In the opinion of this Court, the law is well-settled that an application under Order 7, Rule 11 of the Code is an independent proceeding and can be disposed of at any stage of the proceeding, by the learned trial judge. The same would not be dependant on the result of the application for injunction. In the matter ***Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust*** reported in **(2012) 8SCC 706**, the Hon'ble Apex Court observed that:-

“10. It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

In the matter of ***Saleem Bhai & Ors. vs. State of Maharashtra and Others***, reported in **(2003) 1 SCC 557**, the Hon'ble Apex Court considering Order VII Rule 11 of the Code, held as under:

“ 9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. vs. Ganesh Property* (1998) 7 SCC 184 and *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others* (2006) 3 SCC 100.”

In this case, the misc. appeal arising out of the order refusing injunction is a separate proceeding to be decided by a different forum and the observations of the said court in the said misc. appeal or while disposing of the application for

injunction filed in connection with the misc. appeal, shall not in any way have any influence on the decision of the learned trial judge while deciding the Order 7, Rule 11 application. Findings of a court at the stage of injunction are only tentative.

Under such circumstances, the revisional application is disposed of without any interference with the order impugned.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)