

August 2, 2023  
Sl. No.4  
Court No.19  
s.biswas

CO 1376 of 2022  
With  
CAN 1 of 2023

*M/s. Creative and others*  
*vs.*  
*Smt. Tapasi Chowdhury and others*

Mr. Arijit Bardhan  
Mr. Sayan Sinha  
Mr. Steven S. Biswas

... for the petitioners

Mr. Abhik Sarkar  
Mr. Abdul Latif

... for the opposite parties

This revisional application has been filed challenging an order dated April 19, 2022 passed by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Howrah, in Title Suit No.137 of 2017. The learned court below rejected the said application only on the ground that the defendants were trying to drag the proceedings. The merits of the application was not decided.

Mr. Bardhan, learned advocate for the petitioners, submits that paragraph nos.2 and 6 of the plaint would indicate that the plaintiff, in effect, was trying to reagitate the points which were declined by the learned consumer forum. The suit was barred as the issues raised in the plaint had attained finality and the questions for adjudication in the suit were barred by the principles of res judicata.

The contention of the learned advocate for the plaintiff/opposite party no.1 is that the plaint read

as a whole would not indicate that the suit was barred by law. Such issue shall be decided by the learned court below at the final hearing. The point raised, had to be decided on evidence and not at the stage of disposal of an application under Order 7 Rule 11 of the Code.

This court is not inclined to decide the application under Order 7 Rule 11 of the Code of Civil Procedure on merits and this court deems it fit to direct the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Howrah, to decide the application on merits.

The learned court below shall proceed independently and in accordance with law. It is made clear that this order is not an observation on merits.

The application shall be decided on the settled principles of law. No unnecessary adjournments will be given and the matter shall be disposed of within a period of two months from the date communication of this order.

The order impugned is set aside with the above observation. It is submitted that the objection of the plaintiff has already been filed. This court interferes with only on the ground that the application ought to have been decided either way, on merits.

The revisional application along with the connected application are thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Shampa Sarkar, J.)**