

05.10.2023
Court No. 19
Item no.20
CP

C.O. 1519 of 2023

Hasibur Rahaman
Vs.
Parvez Wahid

Mr. Syed Shahid Imam
Mr. Subhojit Seal

... for the Petitioner.

The revisional application arises out of an order dated March 17, 2023, passed by the learned Judge, 11th Bench, City Civil Court at Calcutta in Title Suit No. 1705 of 2018.

The learned court rejected an application filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure. According to the learned court, on a meaningful reading of the plaint, it appeared that the facts pleaded disclosed a cause of action. The plaint was not rejected.

The opposite party as plaintiff, filed a suit for recovery of khas possession and damages against the petitioner. The opposite party claimed to be the absolute owner of the Premises No. 34/1A, Colootola Street, P.S. Bowbazar, Kolkata – 700073. The opposite party sent an eviction notice on November 21, 2017 and filed an eviction suit in the Small Causes Court. The suit was withdrawn on the ground that the tenancy of the defendant/tenant had

extinguished by operation of law. Thereafter, the plaintiff requested the defendant/tenant to vacate and deliver the possession of the property as he was enjoying the same as a rank trespasser. A notice dated September 12, 2018 was served upon the petitioner, asking the petitioner to deliver peaceful possession of the suit premises before September 30, 2018, failing which the petitioner would become a trespasser.

As the petitioner failed to deliver possession, the suit was filed. The cause of action has been pleaded in paragraph 8. According to the opposite party, the cause of action arose on October 1, 2018 and thereafter on subsequent dates. The petitioner filed an application for rejection of the plaint on the ground that the plaint did not disclose any cause of action.

The grounds for rejection of the plaint are as follows:-

- a) The plaint does not disclose any cause of action.
- b) The plaint is barred by law.

It is well-settled that a plaint could be rejected only if a meaningful reading of the same, led the court to arrive at a conclusion that any of the above two conditions existed. Cause of action is a bundle of facts.

In this case, the plaintiff has narrated the factum of ownership, the extent of tenancy, the request to the tenant to deliver possession, the service of notice determining tenancy and the refusal of the tenant to deliver possession. All such facts together form the cause of action in the suit which have been elaborately stated in the plaint. At the very nascent stage, the plaint cannot be thrown out. Whether the suit is maintainable in law or whether the suit discloses a cause of action or whether the suit is barred by *res judicata* etc. shall be decided as separate issues at the trial.

It is also well settled that only the plaint and the documents annexed to the plaint can be looked into while deciding the application under Order 7 Rule 11 of the Code of Civil Procedure. The contentions of the defendant or his objections are not relevant for the purpose of deciding an application for rejection of the plaint.

The revisional application is accordingly dismissed.

This order is restricted to the adjudication of the propriety of the order dated March 17, 2023. The learned Trial Judge will not be influenced by any of the observations made hereinabove while disposing of the suit.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)