

07.02.2023
Item No.14
Ct. No.7
CHC
(disposed of)

C.O. 2844 of 2022

Debosmita Nandy
Vs.
Sri Biswajit Nandy

Mr. Satyam Mukherjee,
Ms. Sayani Ahmed
...for the petitioner

Mr. Satyajit Mondal,
Mr. Amit Bikram Mahata
...for the opposite party

Subject-matter of challenge in this case is against the rejection of a petition under Order 7 Rule 11 C.P.C.

While assailing the impugned order dated 18th August, 2022, passed by learned Civil Judge (Junior Division), at Bidhannagar, North 24 Parganas, in Title Suit No.349 of 2021, Mr. Mukherjee, learned advocate appearing for the petitioner, submits that the pending litigation has been strategically couched giving a nature to a suit for declaration and injunction, what is originally a suit for cancellation of deed, but the market value of the subject property has been concealed, and thus the suit was under valued.

It is further submitted by the learned advocate for the petitioner that the pending suit ought not to have

been proceeded further, when the pecuniary jurisdiction of the trial court lack its power to proceed further.

Per contra, Mr. Mondal, learned advocate appearing for the opposite party upon receiving a copy of instant application submits that the court below, upon consideration of the entire averments of the pleadings submitted by either of the parties to this case, has rejected the prayer for rejection of plaint in exercise of its discretionary authority.

As per submission disclosed by the parties to this case, written statement has already been filed, wherein the point now under challenge has been specifically disclosed as one of the defences, sought to be put up during trial of this case.

This is a suit instituted in the year 2021. Maintainability of the suit in aid of Order 7 Rule 11 C.P.C. was under challenge before the court below. This is a suit for declaration and injunction.

Upon perusal of the averments contained in the pleadings, the court below has come to a definite opinion that the suit is maintainable.

Admittedly the written statement has been filed, and injunction application has already been disposed by the court below finally.

Some of the interlocutory applications, filed by the opposite party, are pending at the moment.

Ordinarily, an issue is framed by the trial court touching the maintainability of the suit. This Court perceives, having regard to the submission of both sides, that if any issue is framed pertaining to the maintainability of the suit, the point raised in by the petitioner may be appropriately decided, irrespective of the rejection of a prayer under Order 7 Rule 11 C.P.C.

The revisional application is thus disposed of directing the court below to frame a specific issue pertaining to the maintainability of the suit, if not already framed in the meantime.

Since injunction application has already been disposed of, and the case is posted for hearing of some interlocutory applications, the logical conclusion of the suit be reached, as expeditiously as possible, after causing disposal of interlocutory applications, providing sufficient opportunity of hearing to either of the parties to this case, subject to the suitability and convenience of the court below, but without granting any unnecessary adjournment, unless it is extremely unavoidable, preferably before end of 2023.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the learned court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)