

09.10.2023
Item No.35
RP
Ct. No.7

CO 3107 of 2023
Sri Debdutto Mukherjee
Vs.
Sri Atanu Chowdhury & Ors.

Mr. Sanjay Mukherjee
... for Petitioners
Mr. Partha Pratim Roy
Mr. Chiranjib Sinha
Mr. Dyutiman Banerjee
... for Opposite Parties

The order dated 1st June, 2023 passed by the learned Civil Judge (Senior Division), 9th Court at Alipore, South 24 Parganas in Title Suit No.984 of 2022 is under challenge at the instance of the defendant in a suit for declaration and injunction.

The learned trial Judge by the order impugned rejected the application under Order 7 Rule 11 (a) and (d) of the Civil Procedure Code, 1908 with costs.

Mr. Mukherjee, learned advocate appearing for the petitioner by placing reliance to provisions of Sections 102 and 145 of the Co-operative Societies Act, 2006 submits that the instant suit is barred by law.

Mr. Roy, learned advocate representing the plaintiffs/opposite parties submits that the learned trial Judge after considering the submission of the respective parties and taking note of the provisions laid down in Sections 102 and 145 of the said Act observed that the Court has ample jurisdiction to try the instant

suit. He further submits that under Order 7 Rule 11 of the Code, a plaint can be rejected only if it appears from the statement in the plaint that the suit is barred by law.

The learned trial Judge, keeping in mind, the scope of the Order 7 Rule 11 of the Code rejected the said application by assigning reasons. This Court is, therefore, not inclined to interfere with such findings. Rejection of such application cannot be a bar to raise the issue of maintainability of the suit in the written statement and if such issue is raised, the Court has to decide the same upon framing an issue in that regard.

Mr. Roy further submits that till date the written statement has not been filed.

Mr. Mukherjee submits that since the petitioner filed an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 and the revisional application challenging such order was pending, the defendant/petitioner herein has not yet filed the written statement. He further submits that the petitioner may be allowed sufficient time to file the written statement.

In the event the maintainability of the suit is challenged by the defendant in the Written Statement, the learned trial Judge is directed to frame an issue as to the maintainability of the suit and to decide such issue along with other issues that may be framed by the Court. The learned trial Judge while deciding the

issue of maintainability shall not be influenced by the observations and findings recorded while disposing of the application under Order 7 Rule 1 of the Code.

The defendant is directed to file written statement on or before November 24, 2023.

The direction for payment of cost imposed by the learned trial Judge in the order impugned is, however, set aside. C.O. No.3107 of 2023 stands disposed of with the aforesaid directions.

(HIRANMAY BHATTACHARYYA, J.)