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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3196 of 2022

**Saikat Goswami & ors.
versus
Mohunlal Club & ors.**

Mr. Sourav Sen
Mr. Dipak R. Mukherje
... For the petitioners/defendant nos.1 to 6

Mr. Suman Dutta
Mr. Aniruddha Chatterjee
Mr. Sayan Ganguly
... For the opposite party nos.1 and 2

This revisional application has been filed by the petitioner-defendant nos.1 to 6 under Article 227 of the Constitution of India challenging the order dated 19th July, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah, 24-Parganas (South) in Title Suit No.72 of 2021 rejecting the prayer of the petitioners under Order VII Rule 11 of the Code of Civil Procedure.

The brief fact of the case is that the plaintiffs-opposite party nos.1 and 2 filed a suit for declaration and permanent injunction contending *inter alia*, of illegal activities and misappropriation of funds by defendant nos.1 and 2 collusively in respect of plaintiff no.1-society, namely, Mohunlal Club, a society registered under the West Bengal Society Registration Act, 1961. In the said suit the petitioners-defendant nos.1 to 6 filed an

application under Order VII Rule 11 of the Code of Civil Procedure on the ground that the trial court did not have the territorial jurisdiction to try the suit. The said application under Order VII Rule 11 of the Code was rejected by the trial court on the ground that the issue is to be tried upon taking evidence of both the sides.

Being aggrieved by and dissatisfied with the impugned order, the petitioners have filed the present revisional application.

Mr. Sourav Sen, learned advocate for the petitioners submits that as per the plaint case there has been a change in the address of the society from 57C, Bagbazar Street, P.S. Shyampukur, Kolkata-700003 to its new office at 40, Gouribari Lane, Police Station Manicktala, Kolkata-700004. However, no document issued by the registering authority under the West Bengal Society Registration Act, 1961 has been annexed to the plaint. He further submits referring to Sections 5 and 8 of the West Bengal Society Registration Act, 1961 and Rule 9 of the West Bengal Society Registration Rules, 1963 that those provisions are required to be adhered to for alteration in the Memorandum of Association. He submits that the plaint is silent with regard to statutory compliance as above. In light of his aforesaid submissions, he prays that since the Court has no territorial jurisdiction to try the suit, the application of the petitioners-defendant nos.1 to 6 for

rejection of plaint ought to have been allowed by the trial court. He submits for allowing the revisional application.

In reply to the contentions raised on behalf of the petitioners, Mr. Suman Dutta, learned Advocate for the opposite party nos.1 and 2-plaintiffs submits that while dealing with an application under Order VII Rule 11 of the Code of Civil Procedure the Court has to only look to the averments made in the plaint and if upon bare reading of the plaint the same appears to be barred or does not disclose a cause of action, will eventually lead for rejection of a plaint. The averments in the application for rejection of plaint or in the written statement is not to be considered while dealing with an application for rejection of plaint. He further submits that the question of territorial jurisdiction is a mixed question of fact and law and can only be decided upon taking evidence and therefore, it does not come within the ambit and purview of the provisions under Order VII Rule 11 of the Code. To buttress his contention, he relies on a decision of the Hon'ble Supreme Court passed in ***Isha Distribution House Private Limited Vs. Aditya Birla Nuvo Limited & anr.*** reported in **(2019) 12 S.C.C. 205**. In view of his above submissions, he prays that the order passed by the trial court rejecting the application under Order VII Rule 11 of the Code, should be affirmed and the revisional application be dismissed.

Before delving into the merits of the application it will be apposite to reproduce the relevant provisions under Order VII Rule 11 of the Code :

*“11. **Rejection of plaint.** – The plaint shall be rejected in the following cases:-*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of Rule 9.”*

Bearing in mind the aforesaid provisions, it is trite law that while dealing with the application under Order VII Rule 11 of the Code, the only restriction is that the consideration of application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The Court has to consider the plaint as a whole, and in case, the entire plaint comes under the situation covered by Order VII Rule 11, (a) to (f), the same has to be rejected.

In the present case, the petitioner has raised the issue that the trial court did not have the territorial jurisdiction since the previous address of the plaintiff no.1 was at 57C, Bagbazar Street, Kolkata-700003 which falls beyond its jurisdiction. Upon perusal of the plaint, it is found that the plaintiff has made categorical assertion of change of address to 40, Gouribari Lane, Calcutta-700004 which falls within the jurisdiction of the trial court. Whether such change of address is correct or not or whether the change of address has been done following statutory provisions, are matters to be dealt with in the trial. I find substance in the submission of Mr. Suman Dutta, learned Advocate for the opposite party nos.1 and 2 relying on the decision of *Isha Distribution House Pvt. Ltd. (supra)* that the issue of territorial jurisdiction is a mixed question of fact and law.

In light of the aforesaid, I do find any impropriety in the order of the trial court rejecting the application under Order VII Rule 11 of the Code filed by the petitioners.

Accordingly, this revisional application being **C.O. 3196 of 2022** stands dismissed. The impugned order of the learned trial court is affirmed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)