

22-08-2023
Court No.3
AD/19.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.O. 48 of 2023

**DARJEELING TEA ASSOCIATION
Vs.
INDIAN TEA ASSOCIATION AND ANR.**

Mr. Ratul Das
Mr. Niladri Banerjee
Mr. Arijit Mazumder
Mr. Abhishek Sarkar
... for the petitioner.

Mr. Rohit Banerjee
... for the respondent.

The instant application is filed under Article 227 of the Constitution of India against the Order no. 36 dated 11.11.2022 passed by the Learned Civil Judge, Senior Division at Darjeeling in T.S. No. 1 of 2019. The present Petitioner, the Defendant in the suit, filed two applications.

The Opposite Party herein being the Plaintiff of the original suit instituted the

original suit for eviction of the present Petitioner/Defendant no. 1 as well as the proforma Opposite Party/Defendant no. 2 claiming various reliefs.

After filing the written statement the Opposite Party filed an application under Order XII Rule 6 of the Code of Civil Procedure, 1908. On the other hand, the Petitioner/Defendant No. 1 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Trial Court in terms of the impugned order rejected both the applications.

On being aggrieved and dissatisfied, the Petitioner/Defendant No. 1 came up before this Court for rejection of the application filed praying for rejection of the plaint.

The application with prayer for rejection of plaint contains averments that suit is not maintainable on the grounds:

- a) there is no cause of action against the Defendant.
- b) the suit suffers from mis-joinder of parties.

c) plaintiff being a society cannot sue or be sue in its name; therefore, the suit is not maintainable and/or barred by law under the provisions of West Bengal Societies Registration Act, 1961.

d) the Trial Court has no jurisdiction to entertain the suit.

At the time of argument plea of limitation was also taken but the Trial Court did not consider that plea since this plea was not taken in the application and the Plaintiff was taken on surprise.

Mr. Das appearing for the Petitioner vehemently argued that in view of prayer for declaration and considering various prayers it is manifest that the suit is barred by limitation. Hence, the suit should be rejected. He reiterated that the suit is barred under the provisions of West Bengal Societies Registration Act, 1961 as such the plea offends Order VII Rule 11 (d). It is further submitted by Mr. Das that although the plea is that the Plaintiff and the Defendant are licensee basically they should be guided by West Bengal

Premises Tenancy Act, 1997 for which a different forum is prescribed to draw up proceeding for recovery of possession. In nutshell, Mr. Das argued that the Trial Court has wrongly disallowed the application for rejection of plaint.

Mr. Banerjee appearing for the Opposite Party submitted that limitation is a mixed question of law and fact. This apart, *prima facie*, the suit is not barred by limitation, even though, the Court is not taken up the matter. Limitation cannot be a ground for rejection of plaint. According to Mr. Banerjee, all are the questions of fact which can be decided only after trial. According to Mr. Banerjee suit should be expedited.

Both the parties filed notes of argument.

It is no longer *res integra* that while considering the issue of rejection of plaint the Court should confine itself to the four corners of the plaint; no extraneous material should be looked into. It is settled law that limitation is a mixed question of

law and fact which can be decided at the trial only after taking evidence. All the other issues raised by the Defendant for rejection of plaint can only be decided with the aid of evidences, extraneous to the plaint. These are all questions of fact and cannot be decided at the threshold. Non-joinder or mis-joinder, as averred in the application cannot be a ground to reject the plaint. Whether the suit is barred under the provisions of West Bengal Societies Registration Act, 1961 cannot also be decided at this stage without any evidence. In nutshell, it can be concluded that ground taken for rejection of plaint are inappropriate and the Learned Trial Court has rightly refused the prayer for rejection of plaint. Therefore, the impugned order demands no interference.

The Trial Court shall frame issues within fifteen days irrespective of pendency of interlocutory matters and shall expeditiously dispose of the suit without giving any undue adjournment preferably within the period of six months.

The instant application stands disposed of along with all pending applications, if any.

(SUGATO MAJUMDAR, J.)