

Ct. No. 652
34
akb

25.04
2024

C.O. 1478 of 2021
Siddharta Chandra
-Versus-
Abdul Gani (since deceased) & Ors.

Mr. Probal Mukherjee
Mr. Tapas Kumar Ghosh
Mr. Tanmay Chowdhury **...For the Petitioner**

Mr. Dyutiman Banerjee
Mr. Vishal Mallick **...For the Opposite Party**
 Nos. 1(a) to 1(g)

Mr. S.T. Mina
Mr. Pratick Sardar **...For the Opposite Party No. 2**

Aggrieved by order No. 24 dated 8th March, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Chinsurah, Hooghly in Title Suit No. 12 of 2016, this application has been preferred under Article 227 of the Constitution of India.

Plaintiff Nos. 1 and 2 /principal opposite parties herein filed aforesaid suit against the present petitioner and the other opposite parties inter alia for declaration that the property described in Schedule 'A' absolutely belongs to the plaintiffs' partnership firm and also for injunction.

The defendant/petitioner herein filed an application under Order XIV, Rule 2 of the Code of Civil Procedure praying for framing preliminary issue as to whether the suit is maintainable on the ground that the subject matter of the suit i.e. 'Kalyani Cinema' is an unregistered partnership firm and as such the plaintiffs being the partners of an unregistered firm have no right to sue to enforce a right

arising from any such contract. Learned Court below by the order impugned without framing any preliminary issue has rejected the prayer made in the application under Order XIV, Rule 2 of the Code.

Being aggrieved by that order, Mr. Probal Mukherjee, learned Counsel appearing on behalf of the petitioner submits that the Court below failed to consider that the plaintiffs' suit for enforcement of their right arising out of partnership agreement, is barred by Section 69 of the Partnership Act. In fact, plaintiffs as partners have no right to sue to enforce a right arising from such contract. Accordingly, he has prayed for setting aside the order impugned.

Mr. S.T. Mina, learned Counsel appearing on behalf of the opposite party No. 2 raised objection contending that without the trial it is not possible for the Court to held as to whether the suit is maintainable or not. Accordingly, the Court below was justified in passing the order impugned which does not call for any interference by this Court.

On perusal of the order impugned it appears that the defendant/petitioner has filed application under Order XIV, Rule 2 of the Code with a prayer for framing preliminary issue as to whether the suit is maintainable or

not, in view of the fact that the partnership firm in respect of which cause of action of the suit has arisen, is an unregistered firm. The Court below without discussing as to whether the suit is maintainable or not, has dismissed the application under Order XIV, Rule 2 of the Code only with the observation :

“The Court is of the opinion that the question which has been raised is a mixed question of law and fact which shall be decided at the stage of trial”.

When the issue that has been raised by the petitioner herein involves issue of law, goes to the very root of the case, the Court below ought to have come to a definite finding that the suit is either maintainable or is not maintainable. Unfortunately this two line cryptic order is not supported by reason. Merely by saying that some evidence is required to be taken, Court below was not justified in refusing to decide as preliminary issue e.g. an issue regarding jurisdiction / maintainability of the suit.

It is now well settled that an order without reason is ‘body without soul’. Since present order impugned does not disclose, Court’s mind for dismissal, it suffers from perversity and for which interference of this Court is warranted invoking jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, the impugned order No.

24 dated 8th March, 2021 is hereby set aside. The Court below is directed to hear the defendant's application filed under Order XIV, Rule 2 of the Code of Civil Procedure afresh after framing preliminary issue and to decide the same with reasoned order, after giving reasonable opportunity to both the parties to contest and without being influenced by any observation made herein, preferably with a period of four weeks from the date of communication of this order.

C.O. 1478 of 2021 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)