

March 11, 2024
Sl. No.12
Court No.19
s.biswas

CO 1777 of 2022

Anandabazar Patrika

vs.

Partha Krishna Ghosh and others

Mr. Sabyasachi Chowdhury
Mr. Arjun Mukherjee
Mr. Soumitra Datta
Mr. Matri Prasad Das

... for the petitioner

Mr. Sabyasachi Chatterjee
Mr. Akashdeep Mukherjee
Mr. Kiren Sk.

... for the opposite parties

The revisional application arises out of an order dated January 15, 2022 passed by the learned Civil Judge (Senior Division) at Serampore, Hooghly in Money Suit No.24 of 2019.

By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant no.2. According to the learned court, the cause of action although apparently appeared to be barred by limitation in respect of the defendant no.2, but the suit was found to be maintainable against the defendant no.1. The court held that the bifurcation of the causes of action would not be appropriate, relying on certain decisions of the Hon'ble Apex Court. Special reference was made to the decision of the Hon'ble Apex Court in the matter of **Madhav Prasad Aggarwal vs. Axis Bank Ltd.** reported in

(2019) 7 SCC 158, in this regard. It is well-settled that the plaint cannot be rejected in part, if there are multiple causes of action and some of the reliefs claimed are maintainable before the learned Civil Court.

Under such circumstances, the learned court refused to reject the plaint. I do not find any reason to interfere with the order impugned. The plaint can either be rejected as a whole or not rejected at all. Even if only some of the causes of action are found to be maintainable while others are not, the suit must proceed.

In the matter of **Kum. Geetha, D/o Late Krishna & ors. vs. Nanjundaswamy & ors.** reported in **2023 INSC 964**, the Hon'ble Apex Court held as follows:-

“11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsood Ahmad v. Mathra Datt & Co.⁴ This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants ⁴ AIR 1936 Lahore 1021 (P) Ltd,⁵ which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd.⁶ The relevant portion of Madhav Prasad (supra) is extracted hereinunder: “10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge

rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256]* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertng to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial. ...

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...”

Learned advocate for the defendant no.2 submits that composite prayers were made in the application for rejection of the plaint. Prayer that the name of the defendant no.2 be expunged from the plaint, was also made.

In my opinion, the proceedings under Order 7 Rule 11 of the Code of Civil Procedure are guided by the principles laid down in the said provision. The grounds on which the plaint can be rejected has also been specified. The court cannot reject a portion of the plaint qua the petitioner.

If the petitioner wants striking of his name, there are other provisions under the Code which he can avail of in accordance with law. This court has not expressed any opinion on merits.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)