

20.02.2024
Ct. No. 19
Sl. No.11
Cp

C.O. No. 2564 of 2022

Sanjoy Roy
Vs.
Sanjoy Kumar Saha @ Sanjay Kumar Saha & Ors.

Mr. Raj Narayan Datta
Mr. B. B. Chaudhuri

.... for the Petitioner.

The revisional application arises out of an order dated May 11, 2022, passed by the learned Judge City Civil Court, VIIIth Bench, Calcutta.

By the order impugned, an application under Order 14 Rule 2 of the Code of Civil Procedure was rejected upon imposition of cost of Rs.1000/-. The learned court was of the view that once the evidence was over and the suit was at the stage of argument, the question of framing of a preliminary issue as to whether the suit was maintainable, did not arise.

The plaintiff filed the suit for declaration that the partnership firm had not been dissolved but the defendant had converted the same surreptitiously into a proprietorship business and obtained trade licence in his name. Various reliefs were claimed including the accounts etc. After the evidence was closed, the defendant filed an application for framing of a preliminary issue as to whether the suit was maintainable and whether the court had jurisdiction to entertain the suit in view of the

bar under Section 69 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the said Act'). The learned court found that in the written statement such point was not raised. No such plea was raised, when the issues had been framed. The evidence of both the parties were closed and at the stage of argument, such point could not be raised. The defendant had stated in the cross examination that the partnership had been dissolved.

The learned court held that when the issue involved both questions of law and fact, determination as to whether the firm had been dissolved or not, could not be decided as a preliminary issue. Unless the court came to a specific finding that the firm had not been dissolved, the bar under Section 63 would not be applicable.

The question of rejecting the suit on the ground of maintainability would not arise at this stage. Whether the suit should fail in view of Section 69(1) of the said Act or whether the suit will be saved on account of prior dissolution of the firm, involves mixed questions of law and fact.

Moreover, in the written statement as also in the cross-examination the defendant stated that the partnership firm had been dissolved.

This court does not find any irregularity in the order impugned.

The revisional application is disposed of, without any interference.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)