

24.09.2024
Item No.12 DL
Ct.19
A.J.

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

C.O. 3322 of 2024

**Chairman-cum-Managing Director,
Eastern Coalfields Limited & Ors.**

-Vs-

Shibdas Mondal & Ors.

Mr. Debnath Ghosh,
Mr. Syed Nurul Arefin,
Mr. Syed M. Arefin.
.....for the petitioners.

Mr. Debdutta Basu,
Mr. T.B. Saha,
Mr. Sudip Sarkar.
.....for the opposite parties.

The defendants in a suit for declaration of Title are the petitioners of the instant application under Article 227 of the Constitution of India which is directed against Order No. 09 dated August 08, 2024 passed by the 2nd Court of the learned Civil Judge (Junior Division, Asansol, District Paschim Bardhaman in the said suit being Title Suit No. 741 of 2023.

The petitioners, for lack of service of notice under Section 80 of the Code of Civil Procedure upon them had questioned the maintainability of the suit and by an application under Order VII Rule 11 of the Code, had prayed for rejection of the plaint of the said suit.

The learned Trial Judge, by the order impugned has dismissed the said application holding *inter alia* that the principle defendant is a government company, not the Government or public Officer, as such, the plaintiffs are not required to comply with the requirement of Section 80 of the Code.

Mr. Ghosh, learned Advocate for the petitioners submits that the defendants are Public Officers within the meaning of Section 2(17) of the Code and they were appointed under Government orders.

He further submits that his clients would bring the materials in support of the said claim with the filing of the written statement and then shall, make a prayer for framing of a preliminary issue under Order XIV Rule 2 of the Code regarding maintainability of the suit.

To decide the maintainability of the suit, something more beyond the averments of the plaint, is necessary, therefore the order impugned, though does not call for any interference but it is always open for the defendants to bring materials-on-record to satisfy the requirement of Order XIV Rule 2 of the Code and to pray for framing of a preliminary issue regarding maintainability of the said suit.

Needless to say, the observations made in the order impugned shall not have any bearing in deciding the said preliminary issue.

C.O. 3322 of 2024 is disposed of with the above observations without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)