

16.12.2024
Ct. No. 236
Sl. No. 13
tbsr

C.O. 3859 of 2023
Subarna Dutta
Vs.
Sabitri Roy & Ors.

Mr. Pinaki Ranjan Mitra
....for the petitioner
Mr. Surajit Roy
....for the opposite party Nos. 1 & 2

Learned advocate for the petitioner and learned advocate for the opposite party nos. 1 & 2 are present.

As opposite party nos. 3 & 4 are proforma opposite parties, service upon these opposite parties are dispensed with.

Heard the learned advocate for the petitioner and learned advocate for the opposite party nos. 1 and 2.

Perused the petition filed. This application is directed against the order dated 13.09.2023 passed by learned Civil Judge (Junior Division), 1st Court, Howrah in T.S. No. 1604 of 2022. Learned trial judge by an order dated 13.09.2023 was pleased to observe and direct as follows:-

“On perusal of both the complaints i.e. the complaint of the instant suit and the complaint of T.S. No. 963 of 2021, it appears that the cause of action of the instant suit is different and arose on and from 19.11.2022 i.e. after the filing of the previous suit T.S. No. 963 of 2021. Furthermore, it appears that the relief claimed in both the said suits are different and both the suits need to be

adjudicated separately by taking separate set of evidences. The cause of action of the instant suit does not exist when the first suit was instituted, thus, there arise no question that the instant suit is barred.

Accordingly, the application filed by the defendants regarding non-maintainability is rejected on contest.”

Perused the materials on record, learned advocate for the petitioner submits that although two suits filed by the plaintiffs referred to the same cause of action but this is the abuse of the process of law.

Learned advocate further submits that the learned trial court without considering the complaints rejected, the prayer for holding the suit not maintainable under Order 2 Rule 2 of the Code of Civil Procedure.

Learned advocate relies upon the decision passed in the following case:-

Coffee Board Vs. Ramesh Exports Private Limited, reported in (2014) 6 SCC 424.

The Hon'ble Supreme Court in the case of Coffee Board (supra) was pleased to observe as follows:-

“12. The courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his complaints filed in the relevant suits. Considering the technicality of the plea of Order 2 Rule 2, both the complaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action

if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2”.

Upon hearing the learned advocates and considering the order passed by the learned trial court and the decision of the Hon’ble Supreme Court, this Court is of the view that as all the parties in both the suits are not same and relief prayed for is different, in the exercise of jurisdiction under Article 227 of the Constitution, this Court should not decide, at this stage as to whether the suit is maintainable or not. As the learned trial court has assigned the reasons after considering complaints of both the suits and observed cause of action of the instant suit did not exist when first suit was instituted and relief claimed is different, there is no scope for interference at this stage.

As the learned advocate for the petitioner has submitted that defendant nos. 3 and 4 are unnecessarily made parties and the fact that maintainability is mixed question of law and facts these points may be raised and considered at the time of trial.

In the facts and circumstances this application under Article 227 of the Constitution stands disposed of. It is, however, made clear that this Court has not gone

into the merits of the case and all appoints will be left open.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance.

(Biswaroop Chowdhury, J.)