

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3945 of 2022

Nasim Banu & Ors.
Vs.
Sk. Chand & Anr.

Mr. Sahid Uddin Ahmed
... For the petitioners

Mr. Adil Naser
... For the opposite party no.1

1. This revisional application has been filed challenging the order dated 22nd September, 2022 passed in connection with Title Suit No.214 of 2005 by the learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24-Parganas, wherein the learned Judge refused the prayer for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. One application was filed at the instance of the defendants/petitioners herein in the month of August, 2018 contending, inter alia, that the instant suit is not maintainable on the ground of *res judicata* which has been filed in the year 2005 after dismissal of the first suit in the year 1997. It is further stated that in course of cross-examination in the suit, it was disclosed that the first Title Suit, being No.47 of 1989, was dismissed for default. Accordingly, the defendants/petitioners herein pray for rejection of the plaint for lack of disclosing any cause of action and material facts etc.

3. Learned counsel appearing on behalf of the petitioners has submitted that the earlier suit was dismissed for default and after eight years the instant suit was filed on the selfsame ground. In support of his contention, he relied on a case **Ramisetty Venkatanna & Anr. v. Nasyam Jamal Saheb & Ors.** reported in **2023 LiveLaw (SC) 372** where it was observed that if the plaint is found manifestly vexatious and meritless in the sense of not disclosing the clear right to sue, exercising power under Order VII Rule 11 of the Code of Civil Procedure is permissible.

4. Learned counsel appearing on behalf of the petitioners further submits that filing of subsequent suit is barred under Order IX Rule 8 of the Code of Civil Procedure.

5. Learned counsel appearing on behalf of the opposite party no.1 relied on a case of **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelay Adhakshi Amman Temple (Through its Executive Officer) Nagapattinam, Tamil Nadu** reported in **2022 Live Law (SC) 612**.

6. I have gone through the judgments relied upon on behalf of the parties.

7. It is not disputed that the earlier suit, being Title Suit No.47 of 1989, was dismissed for default and not adjudicated on merit. On careful perusal of the copy of the plaint, nothing is disclosed about non-disclosure of cause of action. Earlier suit was not disposed of on merit. Therefore,

Rule of principle of *res judicata* has no role to play. It is not disputed that this application under Order VII Rule 11 Code of Civil Procedure was filed in course of cross-examination of the plaintiff.

8. Referring to the argument advanced with respect to the provision of Order IX Rule 8 of the Code of Civil Procedure, it is settled proposition of law that subsequent suit with fresh cause of action is not barred in spite of dismissal of earlier suit for default. In this case, earlier suit was filed in the year 1989 and subsequent suit was filed in the year 2005 with fresh cause of action. Therefore, the provision of Order IX Rule 8 of the Code of Civil Procedure cannot stand in the way.

9. The facts dealt with by the Hon'ble Apex Court in **Ramisetty Venkatanna** (supra) are not identical to that of the case at hand. It is not disputed that the issues have already been framed on the pleadings of the parties and the suit was put into trial. Therefore, reasons assigned by the learned Judge in the order impugned demands no interference.

10. In the aforesaid view of the matter, the order impugned dated 22nd September, 2022 passed in connection with Title Suit No.214 of 2005 stands affirmed.

11. In the result, the revisional application, being CO 3945 of 2022, stands dismissed.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)