

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO: GA/1/2024
APOT/68/2024
WITH
CS/574/1985

ANDREW YULE AND CO. LTD.
VS
SANJIB SAHA AND ANR.

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice PRASENJIT BISWAS
Date: 10th April, 2024

Mr. Suman Kr. Dutt with
Mr. Rohit Banerjee,
Mr. Sudarshan Kr. Agarwal &
Mr. Vikash Singh, Advs.
...for appellant

Mr. Joydeep Kar, Sr. Adv. with
Mr. Sourabh Mukherjee,
Mr. R.C. Pal,
Mr. Anirban Pramanick &
Ms. Punarbani Nath, Advs.
...for respondents

This is an old suit of 1985.

The claims in the plaint are as follows :

- “a) A decree for possession of the premises No.34, Jackson Lane, since renamed as Indra Kumar Karnani Street, Calcutta- 700 001, fully described in the schedule to the Deed of Lease dated February 4, 1983, being annexure ‘A’ to the plaint, by evicting the substituted defendant therefrom;*
- b) A decree for Rs.149933.18 as pleaded in paragraph 9 of the plaint;*
- c) A decree for mesne profits at the contractual rate of rent provided in the Deed of Lease dated February 4, 1983 executed by and between the parties from the*

day following the date of institution of this suit until recovery of possession of the said premises;

d) In the alternative, an enquiry into the mesne profits and a decree for such sum and/or at such rate as may thereupon be found due to the plaintiffs;

e) Interim interest and interest on judgment;

f) Attachment;

g) Receiver;

h) Injunction;

i) Costs;

j) Further and/or other reliefs.”

In 2023, the defendant Andrew Yule & Co. Ltd. took out an application before the learned single judge (GA/8/2023) praying for the following reliefs :

“a) An order be passed dismissing suit No.574 of 1985;

b) Alternatively, the plaint filed in Suit No.574 of 1985 be rejected;

c) Stay of all further proceedings in Suit No.574 of 1985 pending disposal of the present application;

d) The suit be not transfer to the list of the Undefended Suits;

e) Ad-interim orders in terms of the prayers made hereinabove;

f) Suitable orders as to cost;

g) Such further and/or other orders be passed as this Hon’ble Court may think proper.”

As submitted by Mr. Suman Dutt, learned advocate for the appellant/petitioner/defendant, the purpose of the application was to effect disposal of the old suit by inviting the court to record that the cause of action did not survive, the suit had become infructuous and

ought to be dismissed. He submitted that there were subsequent events post-filing of the suit which necessitated this kind of an order to be passed.

The learned trial judge viewed this application as one under Order VII Rule 11 of the Civil Procedure Code. He found himself unable to circumvent the contours of Order VII Rule 11. The limitation was this. Only the plaint had to be looked into. The evidence could not be evaluated. On a reading of the plaint the suit had to be not maintainable or barred by law. On the face of the records, the suit did not appear to be so according to the learned judge. Nice questions of facts and law troubled his lordship. He came to the conclusion that “since mixed questions of law and facts” were invited, they were to be resolved at the time of final hearing of the suit. The application was dismissed.

Mr. Sourabh Mukherjee, learned advocate for the respondent/plaintiff made every effort to support the above findings of the learned judge.

Either as a result of the subsequent developments, as pleaded by the appellant/defendant in the said application, the suit had become academic and nothing remained of it or it had not become so and the suit ought to be tried and determined. If the answer is in the affirmative with regard to the first proposition, then subjecting the parties to a long-drawn trial would be contrary to notions of justice. It is true that whether the suit had become a spent force or not, could not be decided in the application under Order VII Rule 11 or under Section 151 of the Civil Procedure Code.

Order XIV R. 2(2) provides as follows :

“Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to –

(a) the jurisdiction of the Court, or
(b) a bar to the suit created by any law for the time being in force,
and for that purpose may, if it thinks fit, postpone the settlement of
the other issues until after that issue has been determined, and may
deal with the suit in accordance with the decision on that issue.”

If the suit has become academic and infructuous, it goes to the jurisdiction of the court. The court would no longer retain jurisdiction to adjudicate it. Once it is a jurisdictional issue, it can be tried as a preliminary issue before all other issues. This preliminary issue may not be only an issue of law but an issue of fact and law rolled into one.

We are of the view that the question raised in the application before the court below in GA/8/2023 should be tried as a preliminary issue in the suit on the basis of the application and the affidavits exchanged thereto, before the suit proceeds any further. The learned single judge may direct documents to be disclosed relating to that issue only, invite evidence to be adduced in court or by commission, whichever the court deems fit and proper and decide the question as soon as possible. Depending on the decision of the court on that issue, suitable directions may be made either disposing of the suit or directing that the suit be tried and determined on all issues arising therein.

At this stage, Mr. Mukherjee submits that there is a pending application (GA/6/2022) before the learned single judge. We say that it should be open to the learned single judge to decide in what order the preliminary issue or the pending application is to be entertained by the court.

We request learned trial judge to decide on the preliminary issue within three months from date preferably.

Accordingly, this application (APOT/68/2024) and the connected application (GA/1/2024) are disposed of.

As affidavits were not invited, the allegations contained in the application are deemed not to be admitted.

(I.P. MUKERJI, J.)

(PRASENJIT BISWAS, J.)