

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

IA NO: GA/1/2024
APDT/24/2024
WITH
CS/217/2013

FRONTLINE CORPORATION LTD.
VS
PUNJAB & SIND BANK.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 7th August, 2024

Mr. Jayanta Kr. Mitra, Sr. Adv.
with Mr. Aniruddha Mitra,
Ms. Nilanjana Adhya,
Mr. Kaushik Banerjee &
Ms. Rashmita Sen, Advs.
..for the appellant.

Ms. Sutapa Dutta Guha with
Ms. Jayati Chowdhury,
Ms. Mandabi Chowdhury &
Ms. Priya Malakar, Advs.
...for respondent.

Order in terms of prayer (a) of the stay petition.

We are in a position to hear out the appeal today dispensing with all formalities.

Theoretically, an Order VII Rule 11 of the Civil Procedure Code can be entertained at any stage of the suit. But in this case, the suit is at the trial stage after exchange of pleadings, discovery of documents, preparation of Judge's Brief of Documents, framing of issues. Examination of the witnesses has commenced. The first issue framed by the learned judge, on 9th September, 2019 was :

"Is the suit maintainable in its present form and law?"

The principal ground on which the Order VII Rule 11 application was allowed and the suit dismissed was that, in respect of the cause of action pleaded by the plaintiff the Debts Recovery Tribunal had exclusive jurisdiction, to entertain, try and determine the subject matter of the suit.

This was in spite of the assertion of the appellant-plaintiff that it was a suit for specific performance of an agreement and the said tribunal had no jurisdiction to order specific performance. Incidentally, this has also been found by the learned judge in the impugned judgement and order.

More importantly, an Order VII Rule 11 application is confined only to the averments in the plaint. The maintainability issue raised, may also involve consideration of evidence to decide it. Since the suit was being tried on evidence, there was justification to hear the suit at that stage along with the Order VII Rule 11 application and to order trial of the first issue regarding maintainability before trial of the other issues.

We order accordingly.

We further direct that, if for decision on the first issue, proof and adjudication of the fact are necessary, then the entire process of taking evidence might be concluded by the learned judge. It is also left to his lordship to take a decision whether to decide the preliminary issue along with the other issues or to decide the preliminary issue only if it conclusively determines the suit.

The impugned judgement and decree dated 24th July, 2024 is set aside.

We allow the appeal on the above terms.

The appeal (APDT/24/2024) and the application (GA/1/2024) are accordingly disposed of.

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

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)