

D/L.9.
September 24, 2025.
MNS.

CO No. 142 of 2024

Nasrin Bano @ Nasreen Parween @
Nasreen and others
Vs.
Md. Imtiazul Haque Ansari and others

Mr. Arup Krishna Das,
Mr. Rajarshi Ghosh

... for the petitioners.

1. The present revisional application has been filed by the defendants/opposite parties in a suit for eviction of licensees against an order whereby the petitioners' application, purportedly under Section 11 of the Code of Civil Procedure (for short, "the Code"), was dismissed.
2. Learned counsel for the defendants / petitioners argues that the vendors of the present opposite parties had previously filed a suit for eviction against the petitioners on the allegation that the petitioners are licensees in respect of the suit premises. Such suit was dismissed, which was never challenged before any forum. Thus, the said dismissal has attained finality.

3. Subsequently, the opposite parties, upon purchasing the suit property from the said vendors, agains instituted the present suit for eviction of the petitioners, also on the ground that the petitioners are licensees.
4. It is argued that the present suit is barred by the principle of *res judicata* in view of the opposite parties having stepped into the shoes of their vendors, who had filed the previous suit which was dismissed, and thus are barred by *res judicata* from instituting a fresh suit on the self-same issues and cause of action.
5. It is undoubtedly true that in the event the defendants/petitioners are able to show to the court that the vendors of the opposite parties had filed a similar suit and it had been adjudicated therein that the petitioners are not licensees but have better title, the said decision will be binding on the present opposite parties as well.
6. However, this Court is of the opinion that an application in the nature of one under Section 11 of the Code is not maintainable as such in law.

7. Thus, although this Court does not fully agree with the reasoning of the Trial Court, the conclusion in the impugned order in dismissing the Section 11 application is justified.
8. The appropriate procedure to be adopted by the Trial Court is to frame an issue on the question of *res judicata*, if raised in the written statement filed or to be filed by the present petitioners.
9. Accordingly, CO No. 142 of 2024 is disposed of without interfering with the impugned order, but directing the learned Trial Judge to frame a preliminary issue as to whether the present suit is barred by *res judicata* in view of a previous suit filed by the vendors of the opposite parties having been dismissed with the finding that the present petitioners are not licensees in respect of the suit premises.
10. Such issue shall be decided first by the learned Trial Judge before proceeding to decide the other issues framed in the suit.
11. However, framing of the preliminary issue as directed above shall be subject to the issue of *res judicata* and/or maintainability

of the suit having been raised by the petitioners in their written statement filed in the suit.

12. In the event such issue is framed and decided, none of the observations made in the impugned order shall be considered to be binding on the learned Trial Judge at such stage or any further stage of the suit.

13. It will be deemed that the observations made and findings recorded in the impugned order are only tentative in nature and not conclusive or binding on the parties in any manner whatsoever.

14. There will be no order as to costs.

15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

