

D/L- 94
22/04/2025
Ct. No.-6
Aritra

C.O. 401 of 2025

**Sri Adwaity Nandi & Ors.
Vs.
Md. Aslam Khan Lodhi & Ors.**

Mr. Pradip Kr. Kundu
....for the petitioners

Mr. Pratha Pratim Roy
Mr. Rajdeep Bhattacharya
....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.199 dated November 6, 2024 passed by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.1063 of 2000.

By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that the petitioner herein has been declared as a thika tenant in respect of the suit property. He, therefore, submits that the civil court does not have jurisdiction to decide the instant suit in view of the provisions laid down under Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

Mr. Roy, learned advocate appearing for the opposite parties submits that the issues raised in the

application under Order 7 Rule 11 of the Code of Civil Procedure cannot be decided without taking evidence in the suit. Mr. Roy places reliance upon the Section 27 of the 2001 Act in support of his contention that prior to the coming into force of the 2001 Act, the civil court and not the thika controller had the jurisdiction to decide the issue as to whether the property is a thika property and for the eviction of bharatias therefrom.

It is well-settled that while considering an application under Order 7 Rule 11 of the Code of Civil Procedure the Court has to confine itself within the statements made in the plaint.

The learned advocate appearing for the petitioners, in course of his arguments, could not point out any statement from the plaint of the instant suit wherefrom it can be held that the instant suit for eviction is barred by any law.

That apart, the instant suit is at the stage of peremptory hearing stage and the point raised in the application cannot be decided without taking evidence.

The learned Trial Judge assigned cogent reasons for rejecting the application for rejection of plaint.

This Court does not find any reasons to interfere with such order.

Accordingly, CO 401 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)