

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya  
&  
The Hon'ble Mr. Justice Uday Kumar

FA No. 119 of 2025  
+  
CAN 1 of 2025

Santa Gurung and others  
-vs-  
Sadhan Mukhopadhyay (alias Sukumar) and others

For the appellants : Mr. Rabindra Kumar Mitra,  
Mr. Sourjya Das,  
Ms. Poulami Bhowmick.

For the respondents : None

Heard on : April 21, 2025.

Judgment on : April 21, 2025.

**Sabyasachi Bhattacharyya, J.:**

1. The affidavit-of-service filed in Court today be kept on record.
2. In our order dated March 25, 2025, we had categorically observed that in view of the short ambit of the appeal, the

service of notice along with copy of the application and the Memorandum of Appeal would be deemed to be sufficient service of notice of hearing of the appeal as well.

3. Despite such service having been successfully effected, as borne out by the affidavit-of service, none appears on behalf of the contesting respondent when the matter is called on for hearing today. As such, we take up the appeal for hearing *ex parte*.
4. The present appeal arises out of a deemed decree rejecting the plaint of the appellants' suit for specific performance primarily on the ground that no cause of action has been made out in the plaint.
5. The brief history of the case is that the suit was filed by the plaintiffs/appellants for a decree of specific performance of an agreement for sale.
6. Initially, an application, captioned peculiarly to be one under Section 5 of the Limitation Act, was filed by the defendant no. 1/respondent no. 1, raising an objection as to the suit being barred by limitation. The learned trial Judge turned down such objection.

7. Subsequently, an application for rejection of plaint was filed by the defendant no. 1/respondent no. 1 under Order VII Rule 11 of the Code of Civil Procedure (in short “the Code”), this time on the ground that the suit was undervalued.
8. While advancing arguments, however, the defendant no. 1/respondent no. 1 took the self-same objection of the suit being barred by limitation, which had already been decided at the first instance by the learned trial Judge.
9. As such, the application under Order VII Rule 11 of the Code was turned down by the learned trial Judge.
10. Being aggrieved collectively by the order of rejection of the prior Section 5 application as well as the subsequent Order VII Rule 11 application, the defendant no. 1/respondent no. 1 preferred a revisional application before this Court, which was disposed of by a learned Single Judge of this Court vide order dated April 28, 2023 passed in C.O. No. 355 of 2023. The learned Single Judge affirmed the finding of the learned Trial Judge that the issue of limitation was a mixed question of law and fact and as such, can be raised only at the time of trial and affirmed the dismissal of the application for rejection of plaint on such ground. However, the matter was remanded to the

learned trial Judge for a rehearing of the application under Order VII Rule 11 of the Code for the purpose of ascertaining the other issue as to whether the suit was undervalued and/or short court-fees had been put in.

11. This time, instead of having a rehearing on the self-same application under Order VII Rule 11 of the Code, as intended by the learned Single Judge, the defendant no. 1/respondent no. 1 filed a fresh application under Order VII Rule 11 of the Code, reiterating the arguments made on the earlier occasion as to the suit being undervalued.
12. In respect of under-valuation, however, the learned Trial Judge, by the impugned order (deemed decree), held that the plaintiffs categorically took a stand that the value of the suit was mistakenly shown as Rs.99/- which was not intentional and accordingly had prayed for necessary correction of the same.
13. In fact, it is also submitted before this Court on behalf of the appellants that the appellants are agreeable to effect the necessary amendment to the plaint and correct the valuation as well as to pay the deficit court-fees according to the revised valuation.

14. However, the learned trial Judge, even after recording such submission of the plaintiffs/appellants, went on a tangent and entered into an exercise, beyond the case of the respondent no. 1, to enquire as to whether cause of action was shown properly in the plaint. After an extensive quotation of Section 12 and Section 10 of the Specific Relief Act, 1963 (in short, “the 1963 Act”), the learned trial Judge held that after “formal” perusal of the plaint, it appeared to the court that cause of action for filing of the suit was shown by the plaintiffs on August 31, 2022 whereas in the averments of the plaint there was no whisper regarding any specific amount promised to be paid by the intending purchaser to the intending seller within any specific period. It was further observed that how cause of action arose on August 31, 2022 was not shown by the plaintiffs and there was no whisper in the plaint regarding any issuance of letter requesting the defendant to perform his duty as per terms of the agreement for sale and/or any specific date of denial or refusal by the defendant was not shown.
15. The learned trial Judge observed that only two dates were mentioned in the plaint, which are April 20, 2019 and August

10, 2021, but it was a “totally haze” pertaining to the date of cause of action as shown in the plaint.

16. The learned trial Judge went on to observe in the impugned judgment and deemed decree that something was “fishy” pertaining to the cause of action which was shown after one year from the date of payment. The court observed that it had not done a mini trial but that it did not find any proper cause of action for filing the suit, particularly when the plaintiffs propose to perform their duty but “defendant disposes”. It was also observed that it is very surprising that the specific amount (remaining after the part performance) which was to be paid fully by the plaintiffs was neither mentioned in the plaint nor mentioned in the alleged agreement for sale and so, no specific date being so mentioned, it was clear to the court that the plaintiffs had failed to show proper cause of action for filing the suit as prescribed under Section 12 of the 1963 Act.

17. On such premise, the learned trial judge proceeded to reject the plaint of the plaintiffs/appellants, aggrieved by which the present appeal has been preferred.

18. Order VII Rule 11 of the Code envisages rejection of the plaint only under certain specific yardsticks having been met.

The grounds germane to the present case are found in Clauses (a), (b) and (c) of Rule 11 of the Code.

19. Insofar as undervaluation or insufficient payment of court-fees is concerned, the said provision mandates the Court to give an opportunity to the plaintiffs to correct the valuation and/or to put in the proper court-fees and even after such opportunity being given, if the same is not done, only then to proceed to reject the plaint.
20. Such question does not arise in the present case, since the plaintiffs categorically expressed their willingness to correct the valuation and put in proper court-fees and no opportunity was given by the court to the plaintiffs to do the same nor was the plaint ultimately rejected on Clauses (b) and/or (c) of order VII Rule 11 of the Code.
21. Clause (a) of Rule 11 Order VII of the Code clearly mentions that a ground for rejection of a plaint may be where the plaint “does not disclose” a cause of action.
22. It is to be kept in mind that the ground envisages non-disclosure of cause of action and not that there is no cause of action for filing of the suit. There is a not-so-subtle distinction between the two, inasmuch as non-disclosure of cause of

action in the plaint can be deciphered from the plain reading of the plaint itself whereas to find out whether any cause of action is actually involved in the suit, the Court has to undertake a full-fledged trial on evidence.

23. In the present case, however, the learned trial Judge apparently proceeded on the premise that the plaintiffs had no cause of action for filing of the suit at the plaint rejection stage itself.

24. Even giving the benefit of doubt to the learned trial Judge and construing that the plaint was rejected under Clause (a) on the premise that no cause of action was disclosed, we are unable to accept the findings and conclusions of the learned trial Judge. The learned trial Judge unnecessarily insisted on specific dates being mentioned for payment of the amount due as well as the exact amount due.

25. However, the 1963 Act does not mandate the plaintiffs to disclose all particulars possible with regard to the cause of action and/or to plead the evidence which shall be led by the plaintiffs ultimately in the suit. What is to be seen at the stage of Order VII Rule 11 of the Code is whether the bare

foundation of cause of action is disclosed in the plaint for the plaintiffs to have filed the suit.

26. In paragraph 1 of the plaint, the plaintiffs categorically mention about the written agreement for sale and put a date to the same, being April 20, 2019.
27. In paragraph 3 of the plaint, the plaintiffs also categorically mention that an amount of Rs.10,00,000/- was paid to the defendant no. 1 at the time of execution of agreement to sale and that Rs.1,00,000/- was paid through cheque, the number and particulars of which were also given in paragraph no. 3 of the plaint.
28. Moreover, the plaintiffs state in the self-same paragraph that the plaintiffs have been in lawful possession of the suit plot in part performance of the agreement under Section 53A of the Transfer of Property Act and that the defendant is intentionally transferring the suit plot to some stranger for higher value "in deprivation of the plaintiff", for which the plaintiffs are ready to pay the rest amount to the defendant no. 1 for the entire portion of the suit plot to be sold to the plaintiffs.

29. Thus, by pleading the fact that the defendant no. 1 was intentionally seeking to transfer the suit plot in favour of a third party, it can definitely be construed that such attempt on the part of the defendant no. 1 itself can be taken to be a refusal to specifically perform the agreement between the parties as pleaded in paragraph no. 1 of the plaint. Hence, sufficient cause of action for the suit has been disclosed in the plaint itself. The plaintiff no. 1, it is also pleaded, had already defrayed more than Rs.15,00,000/- towards the suit plot for appreciation and development of the same.
30. In paragraph no. 5 of the plaint, the plaintiffs further plead that the plaintiffs and the proforma defendant no. 2 are ready to pay the rest of the amount to the defendant no. 1 after payment of Rs.11,00,000/- agreed price for the execution and registration of the sale deed.
31. In paragraph no. 7 of the plaint, it is stated that the cause of action has arisen on August 31, 2022. Although it is not clear from the plaint itself as to exactly what happened on August 31, 2022, it cannot be said on a plain reading of the plaint that the plaintiffs should have been shut out on the premise that no cause of action was disclosed on such ground alone.

32. Read in conjunction, paragraphs 3, 6 and 7 of the plaint clearly indicate that the defendant no. 1 has been attempting to transfer the property in respect of a third party, thereby refusing to perform the agreement with the plaintiffs, to which a date was put as August 31, 2022.
33. It is always open for the plaintiffs to fill in further details, if necessary, by amendment of the plaint and/or in evidence. However, we find that the foundation of the necessary pleadings to satisfy the relevant parameters of the 1963 Act in respect of a suit for specific performance of contract are already there in the plaint and as such, the learned trial Judge palpably erred in law in holding at the outset that no cause of action was disclosed at all in the plaint.
34. Thus, we are unable to agree with the conclusions and findings in the impugned judgment and deemed decree, insofar as the same rejects the plaint of the appellants' suit.
35. The vacating of the ad-interim order of injunction was consequential and as such, we can also look into the same within the conspectus of the present appeal.
36. In view of the above observations, FA No. 119 of 2025 is allowed *ex parte*, thereby setting aside the impugned judgment

and deemed decree dated December 12, 2024, whereby the  
plaint of Title Suit No. 97 of 2022 was rejected.

37. We, accordingly, set aside the impugned judgment and  
deemed decree dated December 12, 2024 passed by the  
learned Civil Judge (Senior Division) at Bishnupur, District –  
Bankura in Title Suit No. 97 of 2022 and restore the plaint of  
the said suit to its original position.

38. Insofar as the admitted under-valuation of the suit is  
concerned, we direct the learned trial Judge to grant an  
opportunity and fix a date for the plaintiffs to carry out the  
necessary amendment insofar as the valuation of the suit is  
concerned and to put in the deficit court fees, if any,  
commensurate with the revised valuation of the suit, also  
within a limited period.

39. We make it clear, however, that in the event the plaintiffs  
failed to comply with the said stipulated time to correct the  
valuation and/or put in the deficit court fees, it will then be  
open to the learned trial Judge to consider as to whether  
Clauses (b) and (c) of Order VII Rule 11 of the Code apply and  
to proceed accordingly.

40. Accordingly, the matter is remanded to the court below for proceeding with the trial of the suit on merits in the light of the observations made above.
41. Since the ad-interim order of injunction, which was subsisting on the date of the impugned decree, was vacated only on the ground of rejection of the plaint, as a consequence of setting aside the said deemed decree, we set aside such portion of the deemed decree as well, whereby the ad-interim injunction subsisting then was vacated and hereby restore the said injunction order, as was subsisting on the date of the impugned judgment and deemed decree.
42. CAN 1 of 2025 stands disposed of accordingly as well.
43. There will be no order as to costs.
44. Urgent photostat certified copy of the present judgment, if applied for, be supplied to the parties at an early date.

I agree.

**(Sabyasachi Bhattacharyya, J.)**

**(Uday Kumar, J.)**