

04.03.2025
Sl. No. M/L50
g.b.
Court No.06
265719

CO 446 of 2025

Rajib Sanker Beed
-Vs-
Md. Zahiruddin Khan & Anr.

Ms. Debjani Sengupta
Mr. Amitava Deb
Ms. Paulomi Ghosh
.....For the Petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being order no. 9 dated 27th September, 2024 passed by the learned Civil Judge, 6th Bench, City Civil Court at Calcutta in title suit no. 40 of 2024.

By the order impugned the application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioner herein stood rejected.

The learned advocate appearing for the petitioner submits that the opposite parties herein filed the suit being title suit no. 717 of 2018 before the learned Judge, 6th Bench, City Civil Court at Calcutta.

He further submits that by suppressing the fact of pendency of such suit the opposite parties herein have filed the instant suit being title suit no. 40 of 2024.

The learned advocate appearing for the petitioner submits that the cause of action and the reliefs claimed in

both the suits are identical and, therefore, the suit being title suit no.40 of 2024 should be nipped in the bud in exercise of power of Order VII Rule 11 of the Code of Civil Procedure.

After going through the order impugned, this court finds that the learned Trial Judge took note of the scope of the two suits and was right in holding that the cause of action of the suits are not same.

The learned advocate appearing for the petitioner submits that by suppressing the fact of pendency of an earlier suit between the self-same parties, the opposite parties herein have practised the fraud upon the court and in support of such contention she places reliance upon a decision of the Hon'ble Supreme Court in the case of **S. P. Chengalvaraya Naidu Vs. Jagannath & Ors. reported at (1994) 1 SCC 1.**

It does not appear from the submissions made in the plaint of title suit no. 40 of 2024 that the suit is barred by any law. It cannot be said that the plaint of title suit no. 40 of 2024 fails to disclose any cause of action.

The issue as to whether there was suppression of material facts cannot be decided in an application under Order VII Rule 11 of the Code.

To the mind of this court, the learned Trial Judge was right in rejecting the application under Order VII Rule XI of the Code of Civil Procedure.

With the above observation CO 446 of 2025 stands disposed of.

There shall be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)