

Court No. 6
(265719)

06.03.2025
(A 62)
(S. Banerjee)

CO 458 of 2025

Mahadeb Ghosh
Vs.
Dev Kumar Ghosh & Anr.

Mr. Pritam Majumdar
Ms. Satabdi Das

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant challenging an order being no. 39 dated September 6, 2024 passed by the learned Civil Judge (Jr. Division), Bongaon in Title Suit No. 142 of 2018 and the order dated November 28, 2024 passed by the learned Additional District Judge, Fast Track Court, Bongaon in Misc. Appeal No. 23 of 2024.

By the order dated September 6, 2024, the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The petitioner has prayed for rejection of plaint on the ground that the plaintiff is not the owner of the suit property because the erstwhile owner passed away prior to the execution of the gift deed.

It is well settled that while considering an application under Order 7 Rule 11 of the Code, only

the statements made in the plaint has to be looked into. In the plaint it has been stated that the defendant is a tenant under the plaintiff and a decree for eviction has been prayed for on certain grounds.

After hearing the learned advocate for the petitioner and after going through the materials on record this Court is of the considered view that the petitioner could not make out any ground for rejection of the plaint under Order 7 Rule 11 of the CPC.

It is the case of the petitioner that he is a tenant in respect of the property in question. The petitioner has neither filed any application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 nor filed any application under Section 7(2) of the said Act. The petitioner has also not complied with the conditions stipulated under Section 7(1)(c) of the 1997 Act and the defence of the petitioner against delivery of possession has been stuck out.

This Court, therefore, finds that there is no infirmity in the order impugned warranting interference against the order dated September 6, 2024.

The learned advocate for the petitioner submits that challenging the order dated September 6, 2024,

by virtue of which the application under Order 7 Rule 11 of the CPC stood rejected, the petitioner preferred a miscellaneous appeal, being no. 23 of 2024. On a query of the Court, learned advocate for the petitioner could not satisfy as to how the order dated September 6, 2024 can be said to be an appealable order under the provisions of Code of Civil Procedure.

Be that as it may, by the order dated November 28, 2025 only the appeal was transferred and a date was fixed for appearance before the transferee court.

For such reasons this Court is also not inclined to interfere with the order dated November 28, 2024.

CO 458 of 2025 stands dismissed.

There shall, however, be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)