

Item No.35
17.03.2025
Court. No. 6
GB

C.O. 856 of 2025

Arjundas Buildcon Pvt. Ltd.
Vs.
Sri Sourav Kundu & Ors.

Mr. Kamlesh Jha,
Ms. Nabanita Chatterjee

...for the Petitioner.

1. This application under Article 227 of the Constitution of India is at the instance of the defendant no.5, who has been impleaded as a proforma defendant in the suit and is directed against an order being no.42 dated January 15, 2025 passed by the learned Judge, VIth Bench, City Civil Court at Calcutta in Title Suit No.1013 of 2012.
2. The opposite party herein filed a suit for declaration, recovery of khas possession of the suit property along with all consequential reliefs. In such a suit, the petitioner herein filed an application under Order XIV Rule 2 of the Code of Civil Procedure praying for framing of a preliminary issue.
3. Mr. Jha, learned advocate for the petitioner draws the attention of the Court to the application under Order XIV Rule 2 of the Code of Civil Procedure wherein the petitioner has prayed for framing of two preliminary issues under Order XIV Rule 2 of the Code of Civil Procedure, namely, that the suit is not maintainable on the ground that the plaintiff has no *locus standi* to

maintain the suit and declaring that the suit to be barred by limitation.

4. Order XIV Rule 2(1) of the Code of Civil Procedure starts with a *non obstante* clause. It states that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Therefore, even if, the case may be disposed of on a preliminary issue, the Statute casts an obligation upon the Court to pronounce judgment on all issues. Order XIV Rule 2(2) states that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to – (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, any may deal with the suit in accordance with the decision on that issue.
5. After going through the application under Order XIV Rule 2 of the Code of Civil Procedure, this court finds that the petitioner herein has challenged the maintainability of the suit on the ground that the plaintiff does not have *locus standi* and also that the suit is barred by the laws of limitation. Limitation is a mixed question of law and fact and, therefore, the

same cannot be decided as a preliminary issue. For the purpose of deciding as to whether the plaintiff has a *locus standi* to maintain the suit, the facts of the case have also to be gone into. For such reason, this Court is of the considered view that the issues raised in the application under Order XIV Rule 2 of the Code cannot be decided as a preliminary issue thereby postponing the settlement of other issues.

6. The learned trial judge noted that the application was filed at a stage when the evidence was going to be closed. The learned trial judge was thus right in rejecting the said application filed at a belated stage. For such reason, this Court is not inclined to interfere with the order impugned.
7. Mr. Jha, learned advocate appearing on behalf of the petitioner, in usual fairness, submits that issues with regard to maintainability of the suit on the ground that the plaintiff does not have the *locus standi* and also that the suit is barred by laws of limitation have been framed in the said suit.
8. Considering the fact that the suit is of the year 2012, the learned Judge VIth Bench, City Civil Court at Calcutta is requested to dispose of Title Suit No.1013 of 2012 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.
9. Accordingly, C.O. 856 of 2025 is disposed of.
10. However, there will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)