

Court No. 6
(265719)

14.07.2025
(AD 103)
(S. Banerjee)

CO 1897 of 2025

M/s. Dutta Car & Company & Ors.
Vs.
Pradip Kumar Ganeriwala

Mr. Rajarshi Datta
Mr. Shreyan Bhattacharyya
Mr. S. Dutta

...for the petitioners

Mr. Rajeev Kumar Jain
Mr. Kunal Shaw
Ms. Yamini Madhawan

...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against order no. 30 dated January 16, 2025 passed by the learned Judge Commercial Court at Asansol in IA No. 9 of 2023 arising out of Money Suit (Com) No. 6 of 2024.

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

The opposite party filed a suit for decree for recovery of outstanding dues and for recovery of mesne profit as well as other consequential reliefs.

The petitioners filed an application under Order 7 Rule 11 of the Civil Procedure Code for rejection of plaint on various grounds. During the pendency of the application under Order 7 Rule 11 of the Civil

Procedure Code, the opposite party filed an application under Order 6 Rule 17 of the Code, which stood allowed by way of incorporation of three paragraphs in the plaint. Thereafter, the petitioners filed a supplementary affidavit raising the ground of limitation on the basis of the amended plaint under Order 7 Rule 11 of the Code.

Subsequently, the application under Order 7 Rule 11 of the Civil Procedure Code was taken up for hearing and the same was rejected by the order impugned.

Mr. Datta, learned advocate appearing for the petitioners submits that from the case made out in the amended plaint, it is evident that the cause of action for filing the suit arose sometime in the month of January, 2016 and the suit was filed only in the month of December, 2022. He further submits that the suit, which is purely a money suit, is barred by limitation on the basis of the statements made in the plaint.

Heard the learned advocate appearing for the opposite party on such submission.

After going through the averments made in the plaint as amended, this court finds that the petitioners have stated that the cause of action first arose on and from January 31, 2016 and the same continues till date.

Whether the entire claim made by the plaintiff or a portion of such claim is barred by the laws of limitation, cannot be decided without trial on evidence. The learned trial judge was right in observing that the issue of limitation in the case on hand is a mixed question of law and fact which is to be decided after taking evidence.

The learned trial judge after holding that there is no ground for rejection of plaint directed return of plaint as the dispute is not a commercial dispute.

This court does not find any infirmity in the finding of the learned trial judge.

For such reasons, this court is not inclined to interfere with the order impugned.

At this stage Mr. Datta, learned advocate appearing for the petitioners submits that after the impugned order was passed, the plaintiff/opposite party herein has presented the plaint before the learned 6th Civil Judge (Sr. Division) at Durgapur.

Such submission is placed on record.

With the above observations CO 1897 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)