

29.07.2025
rc/ct.no.06
Item No.25

C.O.No. 2630 of 2025
Sri Santimoy Mallick
Versus
Cresswell Breweries Limited & Ors.

Mr. Partha Pratim Roy	
Mr. Samrat Chakraborty	...for the petitioner
Mr. S.P.Tewari	...for the O.P.

This application under Article 227 of the Constitution of India is at the instance of the first defendant and is directed against an order dated June 13, 2025 passed by the learned Additional District Judge, 3rd Court at Chinsurah in Civil Revision Case No. 10 of 2024 affirming the order no. 74 dated November 21, 2024 passed by the learned Civil Judge (Junior Division), Additional Court at Hooghly, Chinsurah in Title Suit No. 52 of 2015.

The opposite party herein filed a suit for declaration that the decree dated July 22, 1981 passed in Title Suit No. 267 of 1980 is a nullity and nonest in the eye of law that the said decree is not binding upon the plaintiffs and for a further declaration that the defendant no. 1 did not have any right, title and interest over the scheduled suit properties that the plaintiffs were the lawful owners of the suit property and for permanent injunction restraining the defendants and a decree of eviction of defendant no. 1 and other consequential reliefs.

In such a suit the petitioner herein filed an application under Order VII Rule 11 of the Code of Civil Procedure which stood rejected by the order dated November 21, 2024 passed by the learned trial Judge.

Being aggrieved by the said order the petitioner herein preferred a civil revisional application before the learned Additional District Judge, 3rd Court, Chinsurah, Hooghly being Civil Suit No. 10 of 2024. The learned Additional District Judge, 3rd Court, Chinsurah, Hooghly, by the order impugned, dismissed the said revisional application.

Mr. Partha Pratim Roy, learned advocate appearing for the petitioner submits that the suit is ex facie barred by limitation as the opposite party herein has challenged the decree passed on July 22, 1981. Mr. Roy further submits that the issue of limitation, in the case on hand, cannot be said to be a mixed question of law and fact. Mr. Roy draws the attention of the Court to various paragraphs of the plaint more particularly paragraph 29 therein in support of his contention that the opposite party herein had the knowledge of the suit as far back as on April 15, 2004 and the suit was filed more than three years from that date.

Heard learned counsel for the opposite party. He submits that while deciding the application under Order VII Rule 11 of the Code of Civil Procedure the Court has to consider the averments made in the plaint as true and

correct. He submits that the suit cannot be said to be barred by limitation.

Heard learned counsel for both the parties and considered the materials on record placed before this Court.

After going through the plaint as a whole including paragraphs 27, 28, 29 and 30 conjointly, this Court is of the prima facie view that in the plaint the reasons have been stated as to why the suit was filed sometimes in the month of November, 2007. Whether the suit is barred by laws of limitation or not, to the mind of the Court, is a disputed question of fact and the same cannot be decided while adjudicating an application under Order VII Rule 11 of the Code of Civil Procedure. The issue of limitation in the case on hand is a mixed question of law and fact which has to be decided by trial on evidence. It is well settled that while considering the application under Order VII Rule 11 of the Code of Civil Procedure only averments made in the plaint are to be considered and the same is to be treated as true and correct.

The learned trial Judge as well as the revisional Court has assigned cogent reasons for rejecting the application under Order VII Rule 11 of the Code of Criminal Procedure. This Court does not find any reasons to interfere with such order.

With the above observations and directions the instant civil revisional application being C.O. No. 2630 of 2025 stands dismissed.

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

It is made clear that the observations made in this order are only for the purpose of deciding the instant civil revisional application.

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

(Hiranmay Bhattacharyya,J)