

D/L- 29
19/08/2025
Ct. No.-6
Aritra

C.O. 2976 of 2025

M/s. Raja Udyog Pvt. Ltd.
Vs.
M/s. Sun Ray Devcon Pvt. Ltd.

Mr. Probal Kr. Mukherjee
Mr. Nayan Rakshit
Mr. Suhrid Sur
Ms. Ashmita Chatterjee

....for the petitioner

Mr. Souma Subhra Ray
Ms. Neelam Kumari

....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 an order being No.25 dated July 7, 2025 passed by the learned Civil Judge (Sr. Div.), 3rd Court at Barasat, District-North 24-Parganas in Title Suit No.476 of 2022.

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

Mr. Mukherjee, learned senior advocate appearing for the petitioner submits that cause of action as against the sole defendant/petitioner herein has not been disclosed. He submits that for failure to disclose the cause of action, the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. He submits that the opposite party has not stated as to how the petitioner has become the owner of the suit property. He further submits that the plaint proceeds on the basis

that the third party, who is not a party to the suit was the original owner of the suit property. He, therefore, submits that the suit is a vexatious one and for which the same is liable to be rejected. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar vs. Krishna Nandan Singh & Anr.**, reported at **(2020) 16 SCC 594**.

The learned advocate appearing for the opposite party submits that the plaint discloses a cause of action and the learned trial judge after considering the averments made in the plaint has held that the cause of action for filing the suit against the present defendant has been disclosed.

Heard the learned advocates for the respective parties and perused the materials placed.

After going through the averments made in the plaint, this Court finds that in the opening paragraphs of the plaint it has been stated that one LNOP Products Private Limited purchased different portions of the suit property by virtue of registered Deeds of Conveyance and became the absolute owner of the suit property. It has been further stated that the said LNOP Products Private Limited constructed several structure on the said property as per the approved plan and the name of the said company was duly mutated in the Revenue Records.

In paragraph 13 of the plaint it has been stated that pursuant to an order passed by this Hon'ble High Court in its Original Side Jurisdiction in Company Application No.203 of 2009 the said LNOP Products Private Limited amalgamated with two other companies by virtue of an order dated August 20, 2009. It has been further stated in the plaint that the plaintiff being the developer approached the owner of the property to appoint him as the developer for the purpose of developing the suit property. In paragraph 15 of the said plaint it has been stated that the defendant is the owner of the suit property and has agreed to appoint the developer to carry out the development and marketing of the project on behalf of the defendant for the sale and saleable spaces in the project comprising the units, parking spaces, commercial spaces and other constructed areas.

The further case made out in the plaint is that an oral agreement was entered into on January 24, 2022 with an understanding that soon thereafter the parties will enter into a development agreement on the same terms and conditions with a right to introduce any terms and conditions as may be required to facilitate the work of construction over the A schedule property subject to payment of Rs.10,00,00,000/- (rupees ten crore) only as interest free security deposit to the defendant. In the plaint it has been alleged that the draft copy of the development agreement was sent to the defendant

through electronic mail and though the representative of the defendant suggested that some changes are to be made but the suggestions were not sent to the plaintiff. It has been further stated that the plaintiff is ready and willing to perform its part of the oral agreement but the defendant has failed and neglected to enter into the development agreement.

On the grounds as aforesaid the present suit was filed praying for a decree directing the defendant to execute and register development agreement in respect of A schedule property and for permanent injunction restraining the defendant and its men and agents from transferring/alienating/parting with the A schedule property in favour of any stranger purchaser.

After going through the averments made in the plaint this Court is of the view that the cause of action against the present defendant has been disclosed. Whether the plaintiff would succeed ultimately in the suit or not can be decided only after the petitioner discloses its defence and upon a full-fledged trial on evidence.

It is well-settled that while considering an application under Order 7 Rule 11 of the Code of Civil Procedure the plaint has to be read as a whole and only the averments made in the plaint has to be looked into. It is equally well-settled that the averments made in the plaint are to be accepted as true and correct for the

purpose of deciding an application under Order 7 Rule 11 of the Code of Civil Procedure.

Neither the defence case nor the case made out by the defendant in the application under Order 7 Rule 11 of the Code of Civil Procedure can be considered for rejection of plaint.

There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in **Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar (supra)** that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise the power under Order 7 Rule 11 of the Code of Civil Procedure. A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action. However, the said decision cannot come to the aid of the petitioner in the case on hand as the plaint clearly discloses a right to sue.

After going through the averments made in the plaint this Court holds that the plaint discloses a cause of action against the present defendant/petitioner herein.

At this stage Mr. Mukherjee, learned senior advocate appearing for the petitioner submits that the petitioner has already filed the written statement and a preliminary issue with regard to the maintainability of the suit may be framed.

However, considering the fact that the issue of maintainability of the suit as raised by the petitioner herein being a mixed question of law and fact, this Court is not inclined to accept the contention of Mr. Mukherjee for framing a preliminary issue on the maintainability of the suit. However, since the written statement has already been filed, CO 2976 of 2025 is disposed of without interfering with the order impugned but by giving liberty to the petitioner to make a prayer for framing an issue with regard to the maintainability of the suit as and when the issues will be framed in the suit.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)