

05.08.2025
Court No.25
Item No.93
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2905 of 2022

**Sri Prabir Dutta
Vs.
Sri Biswajit Boral**

Mr. Probal Kr. Mukherjee, Sr. Adv.
Mr. Kaushik Dey
Mr. Soumyajit Mishra

...for the petitioner

Mr. Angshuman Chakraborty
Mr. Ramesh Chandra Paul

...for the opposite party

1. Present petition has been filed challenging the order dated 18th July, 2022 whereby the learned Judge, 12th Bench, City Civil Court at Calcutta rejected the application under Order 7 Rule 11 CPC of the petitioner / defendant no.1.
2. Learned Senior Counsel for the petitioner submits that the opposite party / plaintiff had filed a Money Suit. The petitioner / defendant in the written statement took two preliminary objections. Firstly, there is an arbitration clause in the agreement between the parties and secondly, the suit is barred by limitation. Learned Senior Counsel submits that since the objection regarding the arbitration clause was not taken prior to the filing of the written statement, he does not press the same. However, learned Senior Counsel submits

that the learned Trial Court has fallen into error by finally deciding the issue of limitation by holding that the suit is not barred by limitation. Learned Senior Counsel submits that this finding of the learned Trial Judge will prejudice him as it will restrain the petitioner / defendant from leading the evidence to prove the point that the suit is barred by limitation.

3. Learned counsel for the opposite party / plaintiff has fairly submitted that the issue of limitation could have been left open by the learned Trial Judge.
4. It is a settled proposition of law that limitation is a mixed question of fact and law. If an issue is a mixed question of fact and law, the same cannot be decided without giving the parties to an opportunity to lead the evidence to prove the same. In the present case learned Trial Judge in the impugned order on the basis of the pleading has decided that the suit is not barred by limitation.
5. Thus, the impugned order in regard to the same is liable to be modified.
6. Hence, the impugned order is modified to the extent that the issue of limitation as being raised under Order 7 Rule 11 CPC shall remain open for

adjudication in accordance with law after giving the parties an opportunity for leading evidence and being heard.

7. The present petition stands disposed of.
8. Learned Trial Court is directed to dispose of the matter expeditiously.
9. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)