

Court No. 6
(265719)

06.03.2025
(AD 24)
(S. Banerjee)

CO 3631 of 2024

Akhtar Kureshi @ Quraishi
Vs.
Sk. Aspia Rahman & Anr.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Rudranil Das
Mr. Soumava Santra

...for the petitioner

Mr. Soumava Mukherjee

...for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against order dated July 29, 2024 passed by the learned Civil Judge (Sr. Division), 1st Court at Howrah in Title Suit NO. 47 of 2020. By the impugned order the prayer of the petitioner for rejection of the counter-claim under the provisions of Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The petitioner herein filed a suit for declaration, partition and for other consequential reliefs. The opposite parties herein have filed a written statement along with counter-claim. In the counter-claim the opposite parties herein have prayed for a decree for preemption in favour of the defendants in respect of

the undivided shares transferred in favour of the plaintiffs by some co-sharers vide impugned deeds one of which is of the year 2015 and other two deeds are of the year 2018.

After going through the application under Order 7 Rule 11 of the CPC this Court finds that the petitioner herein raised an issue with regard to the valuation of the counter-claim as well as the adequacy of the court fees paid on the counter-claim.

Neither an issue with regard to the valuation nor as to whether sufficient court fees have been paid, can be a ground for rejection of a plaint unless the plaintiff has been directed to pay additional court fees by the learned trial Judge. It is not the case of the petitioner herein that the learned trial Judge directed additional court fees to be paid and the opposite parties have not complied with such order.

This Court is, therefore, of the considered view that the grounds raised in the application under Order 7 Rule 11 of the Code of Civil Procedure do not fall within the scope of Order 7 Rule 11 of the Code. However, there is substance in the submission of Mr. Mukherjee, learned advocate for the petitioner that a court has a duty under Section 3 of the Limitation Act to see whether the counter-claim is *ex facie* time barred or not. The issue of limitation is a mixed

question of law and fact. Such an issue also cannot be decided in an application under Order 7 Rule 11 of the CPC. However, in cases where it appears from a bare reading of the plaint that the counter-claim is ex facie barred by limitation, then such an issue can very well be decided in an application under Order 7 Rule 11 of the Code of Civil Procedure.

Mr. Mukherjee, learned advocate appearing for the petitioner, in his usual fairness, submits that the issue of limitation was not raised by the petitioner herein either in the application under Order 7 Rule 11 of the Code or at the time of hearing the counter-claim. Even though the said issue may not have been raised in the application under Order 7 Rule 11, it is the duty of the Court to see whether the suit is ex facie barred by limitation in view of the obligation casted upon the Court by Section 3 of the Limitation Act even though limitation may not have been set up as a defence.

In view thereof, this Court is of the considered view that the matter should be remanded to the learned trial Judge only to decide the issue as to whether the counter-claim is barred by limitation from the statements made in the counter-claim.

For the reasons aforesaid, the impugned order is set aside.

The learned trial Judge is directed to hear out the application under Order 7 Rule 11 of the Code of Civil Procedure only with regard to the issue of limitation in the light of the observations made hereinbefore as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observations and directions, CO 3631 of 2024 stands disposed of.

(Hiranmay Bhattacharyya, J.)