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C.O. 3869 of 2024

Vandana Jalan & Ors.
-Vs-
Everest Coal Co. Pvt. Limited & Anr.

Mr. Nikunj Belia
Mr. Varun Kothari
Ms. Urvashi Jain

...for the Petitioners

Mr. Sukanta Chakraborty
Mr. Trinath Gangopadhyay
Mr. Ananda Ghosh
Mr. Anindya Halder
Mr. Roumyadeep Saha
Mr. Soumyadeep Dey

...for the Opposite parties

Being aggrieved by the order no. 103 dated 6.7.2024 passed by the learned Judge, Bench VII, City Civil Court at Calcutta in Title Suit no. 173 of 2014, the petitioners herein have preferred the present application. By the order impugned, learned court below has rejected the defendant's application seeking rejection of plaint filed under Order VII Rule 11 (d) of the Code of Civil Procedure and allowed the plaintiff's application under Order VI Rule 17 of the Code seeking amendment of the plaint.

Being aggrieved by that order, petitioners herein contended that the court below acted beyond his jurisdiction in allowing the application for amendment of plaint and thereby refusing the defendant's prayer for rejection of the plaint on an erroneous assumption of jurisdiction in as much as he misinterpreted the point of limitation under

Section 58 of the Limitation Act with respect to the law applicable in a suit for declaration.

The court below erred in finding that there is nothing in the four corners that there is delay in filing the instant suit, being barred by limitation. In fact, the learned Trial Judge erred in law and in fact while passing the order impugned, in not considering that the suit property was non-existent on the date of filing of the suit which was demolished by KMC on 25.8.2010 i.e. four years before filing the suit and as the subject matter of the suit does not exist thereof, the suit is not maintainable. A suit for declaration is required to be filed within three years from the date of demolition under the Limitation Act, which the court below did not consider. Therefore, the court below ought to have allowed the defendant's prayer for rejection of plaint filed under Order VII Rule 11(d) wherein the defendant has specifically contended that the suit is barred under the provision of the Limitation Act.

Learned counsel for the opposite party raised objection contending that on perusal of the schedule of amendment, it clearly reflects that the proposed amendment has been made merely to incorporate subsidiary facts, which is required to be added by way of amendment to adjudicate the real controversy between the parties conclusively.

He further submits that the trial not yet commenced and if the proposed amendment is allowed, it will not change the nature and character of the suit. He further submits that there is no cogent ground for rejection of the plaint and as such, the court below was justified in not rejecting the plaint at its threshold and allowing the amendment application filed on behalf of the plaintiff for the ends of justice.

I have considered the submission made by both the parties. On perusal of the schedule of amendment of the plaint, it appears that the proposed amendment if allowed, will not change the nature and character of the suit in as much as even after proposed amendment, suit will remain a suit for declaration of plaintiffs alleged tenancy right and for mandatory and permanent injunction.

The petitioners herein have taken a specific plea that the plaint is liable to be rejected on the ground of limitation. Needless to reiterate that clause (d) of Rule 11 applies only when the suit appears from the statement made in the plaint to be barred by any law. Here averment of plaint without addition or subtraction does not prima facie shows that plaint is barred by any law. As the question of limitation as raised by defendant connected with the merit of the claim, such point has to be adjudicated along with other issues or as

preliminary issue. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of law and fact. Accordingly, the order impugned passed by the court below does not suffer from any irregularity or impropriety nor the finding made by the court below appears to be perverse for which the order impugned is required to be interfered by invoking this court's supervisory jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, C.O. 3869 of 2024 is dismissed.

However, the dismissal order will not prevent the petitioners herein to prefer an appropriate application challenging the maintainability of the suit on the ground of limitation and in the event of filing such application by the petitioners herein, the court below shall take up such issue for adjudication as a preliminary issue without being influenced by any observations made herein.

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

(Dr. Ajoy Kumar Mukherjee, J.)