

Item No. 8 & 9
03.12.2025
Court. No. 6
GB

C.O. 4014 of 2025

Power Tools & Appliances Co. Pvt. Ltd. & Ors.
Vs.
Pinaki Roychowdhury & Ors.

With

C.O. 4024 of 2025

Purnendu Roychowdhury & Ors.
Vs.
Pinaki Roychowdhury & Ors.

*Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Anirban Ray, Sr. Adv.,
Mr. Kanishk Kejriwal,
Mr. Saubhik Chowdhury,
Ms. Sayantani Banerjee*

*...for the Petitioners (in CO 4014 of 2025) &
Opposite Party Nos.2 to 5 (in CO 4024 of 2025).*

*Mr. Anindya Kumar Mitra, Sr. Adv.,
Mr. Partha Pratim Ray,
Mr. Saumya Roy Chowdhury,
Mr. Tanmoy Mukherjee,
Mr. Arkaprava Sen,
Ms. Aditi Kumar,
Mr. Sayantan Kar,
Mr. Somak Chatterjee,
Mr. Parikshit Lakhotia*

*...for the Opposite Party No.1
(in CO 4014 of 2025).*

*Mr. Aniruddha Chatterjee,
Mr. Partha Pratim Ray,
Mr. Siddhartha Banerjee,
Mr. Tanmoy Mukherjee,
Mr. Arkaprava Sen,
Ms. Aditi Kumar,
Mr. Sayantan Kar,
Mr. Somak Chatterjee,
Mr. Parikshit Lakhotia*

*...for the Opposite Party No.1
(in CO 4024 of 2025).*

*Mr. Jaydip Kar, Sr. Adv.,
Mr. Samrat Sen, Sr. Adv.,
Mr. Shaunak Mitra,
Ms. Suchi Sattaw Mallick*

*...for the Opposite Party Nos.2 to 6 (in CO 4014 of 2025)
& Petitioners (in CO 4024 of 2025).*

*Mr. Shounak Mukhopadhyay,
Mr. Paritosh Sinha*

*...for the Opposite Party No.7 (in CO 4014 of 2025)
& Opposite Party No.6 (in CO 4024 of 2025).*

1. The defendants are aggrieved by the orders dated October 28, 2025, October 31, 2025 and November 3, 2025, passed by the learned Civil Judge (Senior Division) at Alipore in Title Suit No.1591 of 2025.
2. The Court does not find that, the order dated October 28, 2025 suffers from any irregularity. On October 28, 2025, the defendant nos.6 to 9 appeared and filed two petitions, praying for a direction upon the plaintiff to supply the copy of the injunction application with the annexures. The defendant Nos. 1 to 5 filed photocopy of the order of the High Court dated 16.10.2025, as per 'firisty'. The court fixed October 31, 2025 for hearing of the application under Order 6 Rule 17 of the Code of Civil Procedure, which had been filed by the plaintiff. October 31, 2025 was also fixed for further orders in the application for temporary injunction. The defendant no.10 appeared and prayed for time to file a written objection to the application for temporary injunction. The prayer was considered and allowed. The defendant nos.1 to 5 filed an application under Order 7 Rule 11 of the Code of Civil Procedure and a separate application under Section 151 of the Code of Civil Procedure praying for enquiry as to the correct valuation of the suit. Another application under Order 7 Rule 11 read with Section

151 of the Code of Civil Procedure was filed by the defendant nos.6 to 9.

3. Although, October 31, 2025 was fixed for hearing of the application under Order 6 Rule 17 of the Code of Civil Procedure, the Court did not proceed with the hearing of the said application as both parties wanted to prioritize the hearing of their respective applications. On November 3, 2025, the court took up the application dated October 31, 2025 filed by the defendant nos.6 to 9. The said defendants had prayed that their application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure must be taken up first.
4. The court considered the order of a coordinate Bench passed in a civil revisional application, inter alia, directing that the issue of maintainability of the suit was kept open and such issue shall be heard at the threshold. The defendant nos.1 to 9 urged before the learned court that their respective applications under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure were in the nature of a demurrer application involving a jurisdictional issue and accordingly those should be disposed of prior to disposal of the application for amendment of the plaint.
5. It was urged on behalf of the plaintiff that, as the application for amendment of the plaint had been filed on October 28, 2025, that is, prior to the

application under Order 7 Rule 11 of the Code of Civil Procedure, the said application should be disposed of first.

6. The court was of the view that, it would be just and proper if the amendment application along with the other two applications were heard together. The court was mindful of the fact that vexatious and ambiguous suit must not be indulged by protracting an unnecessary litigation. Wastage of precious judicial hour, should be avoided. The court mentioned that, there were judicial precedents which laid down that, an amendment application could be heard prior to an application under Order 7 Rule 11 of the Code of Civil Procedure. The court also held that there were decisions which permitted both the applications to be heard together.
7. Mr. Kar and Mr. Banerjee, learned senior advocates appear for the defendants who had filed the applications for rejection of the plaint. It is urged that, the learned court did not have jurisdiction to hear the application under Order 6 Rule 17 of the Code of Civil Procedure in view of the specific bar under Section 430 of the Companies Act, 2013. The entire cause of action as pleaded, will indicate that the suit was filed, alleging oppression and mismanagement by the directors of the company. The relief for a declaration that permission was not granted by the Urban Development Department for development of the

land, the prayer for cancellation of the deed, etc., were only consequential and ancillary reliefs. The main reliefs prayed for, could never be granted by a civil court, in view of the specific bar under the Companies Act. If the court could not entertain the suit on account of lack of jurisdiction, the court erred in fixing all the applications together, by making an observation that the law permitted an application for amendment to be heard prior to an application for rejection of plaint.

8. Mr. Mitra and Mr. Chatterjee, learned senior advocates appear on behalf of the plaintiff and submit that the revisional application is not maintainable, inasmuch as, no jurisdictional error had been committed by the learned court. The learned court had fixed the applications for hearing and the issues raised herein should be raised before the learned Trial Judge.

9. I have considered the rival contentions of the parties. The decision relied upon by Mr. Kar in the matter of ***Mst. Zohra Khatoon versus Janab Mohammad Jane Alam & Ors.*** reported in ***1977 SCC OnLine Cal 238***, cannot be taken into consideration by this Court at this stage. This Court is not inclined to hear the applications on merits, even on the, prima facie, case of the defendants with regard to lack of jurisdiction of the Civil Court. Any observation by this Court in this regard, will prejudice

the applications which are pending before the learned trial judge. Secondly, general power of superintendence is to be exercised sparingly and in exceptional situations. The order impugned before this court must suffer either from perversity or lack of reasons, or denial of an opportunity of being heard or passed in abuse of process of court or in excess of jurisdiction.

10. In this case, the defendants invited the court to hear out the applications under Order 7 Rule 11 of the Code of Civil Procedure, first. A prior application for amendment of the plaint was pending. The court was of the view that although an application for amendment could be taken up before the hearing of the applications for rejection of the plaint, but upon considering the submissions made by the defendants, the court decided that all the applications should be taken up together without attaching any priority to any of those applications.
11. The revisional application, in my opinion, has been filed with an apprehension that the court will hear the application for amendment and allow the same without considering the issue of jurisdiction. This Court does not find any illegality in the orders of the learned trial judge. The learned trial judge had exercised its discretion and fixed the hearing of the applications altogether. In the event, the learned trial judge takes up the application under Order 6 Rule 17

prior to the application under Order 7 Rule 11, all objections as available to defendants shall be raised, including the point of jurisdiction of the learned trial judge to take up the said application first. The decision in the matter of ***Mst. Zohra Khatoon (supra)*** can also be cited before the court. The court will independently decide the issue without being influenced by the observations in the order impugned. This Court has not entered into the merits of the issues involved.

12. Accordingly, the revisional application is disposed of.
13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)