

27.01.2025
Item No.12
KS
Ct. No.7

C.O. 4082 of 2024
Polymet SA (S) Pte. Ltd.
Versus
Sanjay Goswami & Ors.

Md. T. Hossain
.....For the Petitioner

Ms. Ujjaini Chatterjee
Mr. Sidhartha Basu
Mr. Steven S. Biswas
.....For the Opposite Party No.1

1. By the order dated May 15, 2024 passed by the learned Judge, 11th Bench, City Civil Court at Kolkata in Title Suit No.816 of 2023, the application under Order VII Rule 11 of the Code of Civil Procedure filed by the 3rd defendant in the suit/petitioner herein stood rejected.
2. Learned advocate appearing for the petitioner submits that the suit is barred under Section 430 of the Companies Act, 2013. He further submits that the grounds taken in the application under Order VII Rule 11 of the Code of Civil Procedure has not been considered by the learned Trial Judge.
3. Learned advocate appearing for the opposite party submits that the suit is not barred under Section 430 of the Companies Act.
4. Heard the learned advocates for the parties and perused the materials placed.

5. The opposite party no.1 herein filed a suit for declaration that the terms of settlement dated 28th August, 2021 entered into by and between the defendants is null and void and for permanent injunction restraining the defendants from giving any effect to the terms of the said settlement.
6. Plaintiff claims to be the shareholder in the proforma defendant company. It has been stated in the plaint that a terms of settlement dated 28.08.2021 was filed before the National Company Law Tribunal and the proceeding before the Tribunal was dismissed as withdrawn on the basis of the said settlement. The cause of action of the said suit was that the said terms of settlement was entered into by the defendant nos.1 and 2 without any authorization.
7. Section 430 of the Companies Act, 2023 states that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under the said Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

8. On a perusal of the Order VII Rule 11 application, this Court finds that the petitioner herein has specifically raised the issue of bar of jurisdiction of the Civil Court in view of Section 430 of the Companies Act, 2013.
9. Order VII Rule 11(d) states that the plaint should be rejected where the suit appears from the statement in the plaint to be barred by any law. Since the petitioner took a specific plea that the suit is barred by law, the same ought to have been decided by a reasoned order.
10. The learned Trial Judge did not record any finding on the issue as to whether the jurisdiction of Civil Court is based in view of the bar laid down under Section 430 of the Companies Act, 2013. Only for such reason, this Court is of the considered view that the impugned order is liable to be set aside and the matter should be remanded to the learned Trial Judge for deciding the said application under Order VII Rule 11 of the Code of Civil Procedure afresh upon giving an opportunity of hearing to the respective parties.
11. For the reasons, as aforesaid, the impugned order stands set aside and quashed. The application under Order VII Rule 11 of the Code of Civil Procedure stands restored to the file of the learned Trial Judge. The learned Judge, 11th Bench, City Civil Court, Kolkata is directed to decide the application

under Order VII Rule 11 of the Code filed on 25th August, 2023 afresh in the light of the observations recorded hereinbefore and to dispose of the same by passing a reasoned order as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

12. With the above observation, C.O. 4082 of 2024 stands allowed.
13. There shall be, however, no order as to costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)