

Sl.40
04.08.2025
Court No.6
BP

C.O. 4433 of 2024

Gouri Basak & Ors.
-versus-
Amiya Kumar Shau

Ms. Priyakshi Banerjee
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated 3rd December, 2024 passed by the learned Judge, XIIIth Bench, City Civil Court at Calcutta in Title Suit No. 630 of 2024.

By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioners submits that the opposite party filed the suit totally suppressing the material fact. She further submits that the suit is barred by the laws of limitation as the same was not filed within a period of twelve years from the date when the cause of action arose. In support of such contention she places reliance upon Article 65 of the Limitation Act.

The opposite party filed a suit for declaration that the plaintiff is entitled to protect the shop room from damage and for eviction and recovery of possession in

respect of the shop room and for permanent injunction. Article 65 of the Limitation Act deals with the period of limitation in respect of suits for possession of immovable property or any interest therein based on title. The period of limitation for such suit is twelve years and the limitation shall start to run from the date when the possession of the defendant becomes adverse to the plaintiff.

It is well settled that for the purpose of rejection of plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure it is only the averments made in the plaint that is to be looked into and if from the statements made in the plaint the suit appears to be barred by law the plaint can be rejected. It is equally well settled that while deciding an application under Order 7 Rule 11 of the Code of Civil Procedure the averments made in the plaint shall have to be treated as true and correct. It is only if the defendant succeeds in proving that the possession of the defendant has become adverse to the plaintiff and more than twelve years have been passed from such date, the suit can be said to be barred under Article 65 of the Limitation Act. That stage has not yet reached in the instant suit. Thus, on an application under Order 7 Rule 11 of the Code of Civil Procedure the plaint of a suit of present nature cannot be rejected.

The learned trial judge after considering the materials on record was right in holding that the suit

which has been filed for eviction of the petitioners cannot be said to be barred by law on the basis of the averments made in the plaint.

For such reasons, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 4433 of 2024 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)