

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

SAT No. 276 of 2024
+
CAN 1 of 2025

Subhas Debnath and others
-vs-
Alam Miya and others

For the appellants : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy

For the respondent nos. 1 to 6 : Mr. Md. Nure E Zamman,
Mr. Somen Bose

Heard on : March 10, 2025.

Judgment on : March 10, 2025.

Sabyasachi Bhattacharyya, J.:

1. As per previous direction, service has been effected on the respondents. The respondent nos. 1 to 6 are represented

through counsel. Affidavit-of-service filed in Court today be kept on record.

2. We recorded in our previous order dated February 18, 2025 that service of notice of copies of the application would constitute service of notice of the appeal on the respondents.
3. Moreover, the matter arises out of an application captioned under Section 11 of the Code of Civil Procedure (in short “the Code”) filed before the Trial Court by some of the defendants.
4. The applicants of the said application in the trial Court are substantially represented by the respondent nos. 1 to 6, who were co-applicants therein.
5. The present Second Appeal has been directed against a judgment of the Appellate Court whereby the Appellate Court dismissed the Title Appeal preferred by the appellants at the admission stage under Order XLI Rule 11 of the Code on the premise that the impugned order was not appellable.
6. Upon a perusal of the trial court’s judgment dated July 19, 2024, we find that, by the same, purportedly an application captioned to be one under Section 11 of the Code was allowed.

7. However, the effect of allowing the said application was fatal to the suit. In the said application, which is also annexed to the stay application filed in connection with the present Second Appeal, a prayer was made that the “present case” be rejected on the ground of *res judicata*. By the expression “present case”, the defendants/applicants obviously meant the suit itself, since there was no other “case” pending, which is also clear from the tenor of the application as a whole.
8. The respondents claim that there was a previous decree passed in a prior suit, which operates as *res judicata* in the present suit. An appeal has been preferred against the previous decree, which is also pending.
9. It is contended that thus, the appellants were well within the know of the previous decree and that the present suit is barred by *res judicata*, but suppressed the same in their plaint. Such contention in the application under Section 11 of the Code is corroborated by the stand taken in the written statement filed by the respondents in the suit as well.
10. Hence, although captioned to be one under Section 11 of the Code, the application was one for rejection of the plaint.

11. This is because of the simple reason that the character of an application is not determined by its caption but by the substance thereof and the relief sought therein. The relief sought being rejection of the plaint, the same could only be granted under Order VII Rule 11 of the Code, although *res judicata* under Section 11 of the Code might be a ground for such rejection as a bar of law at best.
12. Thus, in any event, even taking a conservative view, the trial court's judgment tantamounted to allowing an application for rejection of plaint, which is a deemed decree under Section 2 of the Code. Thus, the learned first appellate Judge palpably acted without jurisdiction in observing that no appeal was maintainable and dismissing the Title Appeal at the admission stage.
13. In any event, Section 11 of the Code does not provide any scope for filing an application but is a substantive provision providing a bar to file a subsequent suit if similar issues were substantially and directly decided in a prior suit by a competent court having jurisdiction to grant relief sought in the subsequent suit.

14. Even if we take the application captioned to be under Section 11 of the Code to be an application for dismissal of the suit, in such event as well, the rigours of Order XIV Rule 2(1) of the Code would apply and in spite of the court being able to decide the suit on a single issue, it was incumbent upon the Trial Court to decide all the issues concerned. The only bar under Order XIV Rule 2(2) of the Code would be if there was a bar evident on the face of the pleadings and/or if the court lacked jurisdiction. The second ground is not applicable here but the bar of *res judicata* as pleaded in the written statement and the application under Section 11 of the Code would at best be a mixed question of fact and law in the circumstances of the present case, to be decided along with other issues as an issue framed in the suit, as per the mandate of Order XIV of the Code. The said issue, not being a bar of law apparent on the face of the plaint, could not be decided first in isolation of the other issues. In any event, the learned trial Judge did not even attempt to frame a preliminary issue on the said question and/or decide the same upon hearing parties.

15. Thus, the learned trial Judge palpably erred in law in allowing the application for rejection of the plaint/dismissal of

the suit at the threshold, without formulating any issues on the question of *res judicata* and/or deciding the same on a full-fledged trial of the suit along with the other issues.

16. Hence, both the learned Trial judge and the First Appellate Court substantially erred in law in allowing the application for rejection of plaint,/dismissal of the suit at the preliminary stage.

17. Accordingly, the Second Appeal is admitted on the following substantial questions of law:

i) Whether the learned First Appellate Court substantially erred in law in dismissing the Title Appeal under Order XLI Rule 11 of the Code of Civil Procedure on the ground that no appeal was maintainable, despite the challenge being against an order passed for rejection of plaint/dismissal of the suit, both of which are appellable;

ii) Whether both the courts below substantially erred in law in allowing the application for rejection of plaint/dismissal of the suit without the conditions and parameters of order VII Rule 11 of the Code and/or Order XIV Rule 2 of the Code being satisfied and/or adhered to.

18. In view of the short conspectus of the appeal and since opportunity of hearing has been given to both the contesting parties to address the court on merits, and as the other respondents choose not to appear despite service, we proceed to dispose of the appeal as follows:
19. The learned trial judge palpably erred in law in allowing the application captioned to be one under Section 11 of the Code, without treating the same to be substantially an application under Order VII Rule 11 of the Code, thereby rejecting the plaint without the preconditions and parameters of order VII Rule 11 of the Code having been satisfied, since there was no bar of law evident on the face of the plaint and/or non disclosure of cause of action for the present suit within the four corners of the plaint.
20. Alternatively, even if we treat the order of the learned Trial Judge to be one of dismissal of the suit, the learned Judge was all the more in error since, under the mandate of Order XIV Rule 2 of the Code, it was the incumbent duty of the learned Trial Judge to frame proper issues, *inter alia*, on the question of *res judicata* and to decide all issues together on a full-fledged trial, since the issue of *res judicata*, being a mixed

question of fact and law in the present context, could not be decided prior to the other issues in isolation.

21. The learned Appellate Court went one step further in holding that the impugned decree (deemed) of the learned Trial Judge was not appellable and dismissing the appeal at the Order XLI Rule 11 stage.

22. Since we have already held that the judgment and deemed decree of the learned Trial Judge was itself bad in law, no useful purpose would be subserved in keeping the present appeal pending or remanding the matter to the First Appellate Court, which would not enure to the benefit of the respondents as well, since an unnecessary and futile long-drawn procedure would ensue before the Appellate Court despite this Court having found on merits that the trial judge substantially erred in law in rejecting the plaint/dismissing the suit in effect.

23. Accordingly, SAT No. 276 of 2024 is allowed on contest against respondent nos. 1 to 6 and *ex parte* against the other respondents, thereby setting aside the judgments and decrees of both the courts below and remanding the matter to the learned Trial Judge for deciding the suit on a full-fledged trial upon framing proper issues, including the issue of *res judicata*,

and deciding all the issues together upon giving adequate opportunity of adducing evidence and hearing to the parties.

24. Consequentially, CAN 1 of 2025 is also dismissed.

25. There will be no order as to costs.

26. A decree be drawn up accordingly.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)