IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Md. Shabbar Rashidi

CO 477 of 2025

Shrimati Sabita Jana & Ors.

Vs.

Gopal Das & Ors.

For the petitioner	:	Mr. Rabindranath Mahato, Adv. Mr. Aritra Shankar Ray, Adv.
For the O.P. No. 1	:	Mr. Lalratan Mandal, Adv. Mr. Dilip Kumar Sadhu, Adv.
For the O.P. Nos. 3 & 4	:	Mr. Sukanta Das, Adv.
Heard on	:	25.11.2026
Judgment on	:	25.11.2026
Uploaded on	:	25.11.2026

MD. SHABBAR RASHIDI, J.:-

1. Petitioners/defendant nos. 5 to 10, opposite party no. 1/plaintiff and opposite party nos. 3 and 4/defendant nos. 11 and 12 are represented.

2. The instant revisional application has been filed by the petitioners herein assailing an Order No. 18 dated September 11,

2024. By the said order, the learned Trial Court rejected an application under Order VII Rule 11(d) of the Code of Civil Procedure filed on behalf of the petitioners. By making such an application, the petitioners raised a point in the original Title Suit No. 25 of 2022 challenging the maintainability of the suit on the ground of amendments to the Companies Act, 1960 more specifically Section 294 of the said Act. By making an application under Order VII Rule 11 of the Code of Civil Procedure, the petitioners sought the suit to be dismissed on the following grounds:-

> *"1) The appointment of Plaintiff Gopal Das as sole Selling Agent is illegal according to Company Amendment Act, 1960.*
>
> *2) The appointment of Gopal Das as sole selling Agent is illegal according to the provisions of Section 294 of the Company Amendment Act, 1960.*
>
> *3) That the Resolution dated 31.03.2014 was passed in the General Meeting of the Board of Directors and other members numbering 10 (Ten) who were present in the said meeting of said company. The said resolution dated 31.03.2014 is valid and legal and for this reason, "B" Schedule deeds are legal and valid."*

3. However, at the time of hearing, learned advocate for the petitioners submits that he is willing to give up the point nos. 1 and 2 noted above in his application under Order VII Rule 11. He seeks that the instant application be disposed of with liberty to the petitioners to agitate point no. 3 along with other points of law before the Trial Court and the learned Trial Court be directed to

take up the matter as a preliminary issue. He submits that the instant revisional application be disposed of in terms of a direction upon the learned Trial Court to hear and dispose of any application on the maintainability of the suit to be filed by the present petitioners as a preliminary issue, if so filed.

4. On the other hand, learned advocate appearing for the opposite party nos. 3 and 4 submits that in order to decide an application under Order VII Rule 11, the averments made in the plaint to be taken into consideration only. By filing the application before the learned Trial Court, the petitioners failed to establish that the suit was barred by any law on the basis of the pleadings averred in the plaint.

5. Learned advocate for the opposite party nos. 3 and 4 also submitted that when the suit was instituted, the amendment in the Companies Act was not prevailing at that time and as such, it could not be made applicable to pending suits. Moreover, the Companies Act of 1960 was replaced by the Companies Act of 2013, subsequently.

6. By the impugned order, the learned Trial Court held that a plaint could be rejected if the pleadings contained in the plaint revealed that it was barred under any law. According to the case made by the petitioners, the appointment of the plaintiff was void *ab*

initio in accordance with the provisions of Section 249 of the Companies Act. The learned Trial Court held that whether the issue as to the appointment of the plaintiff was ratified or not was a matter that could be determined in the trial of the main suit and that could not have been decided at the threshold. It was to be decided at the trial upon consideration of evidence led at the trial.

7. In the aforesaid fact and circumstances and with such observations, the petition filed on behalf of the petitioners/ defendant nos. 5 to 10 under Order VII Rule 11 of the Code of Civil Procedure was rejected by the learned Trial Court.

8. On the basis of the materials placed before me in the present proceeding, I am also of the view that the learned Trial Court was justified in holding that the bar of suit by any law at the relevant time was to be decided on the basis of averments made in the plaint, the petitioners did not make out a case as required under Order VII Rule 11(d) of the Code of Civil Procedure.

9. In such circumstances, I do not find any merit in the present revisional application.

10. The petitioners/defendant nos. 5 to 10 may file an application with regard to the maintainability of the suit. If any application is so filed, it shall be decided by the learned Trial Court in accordance with law.

11. In such circumstances, the instant revisional application being **CO 477 of 2025** is disposed of.

12. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Md. Shabbar Rashidi, J.)

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