In the High Court at Calcutta

Civil Revisional Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No. 1251 of 2018

Sarita Agarwala and others

Vs.

Ruby Ganguly and others

For the petitioners	:	Mr. Joy Saha, Mr. Mainak Bose, Mr. Debdatta Ray Choudhury
For the opposite party nos. 1 and 2	:	Mr. Abhrajit Mitra, Mr. A. Banerjee, Mr. J. Mukherjee, Mr. R. Baliyal
Hearing concluded on	:	19.12.2018

Judgment on : 09.01.2019

Sabyasachi Bhattacharyya, J.:-

The defendant nos. 6(a), 6(c) and 6(d) in a suit for recovery of possession and consequential reliefs, have preferred the instant revisional application against an order whereby the petitioners' application for rejection of plaint, under Order VII Rule 11 of the Code of Civil Procedure, was dismissed.

2. The suit was filed primarily for recovery of possession on the ground of breach of covenants of a lease between the parties and for arrears of rent and mesne profits.

3. The plaint proceeded on the premise that one Sital Chandra Bandyopadhyay was owner of 24 bighas of composite plot of land. Sital, by a registered lease deed dated May 10, 1921, demised the said premises to Hukum Chand Kasliwal, Madan Gopal Daga, Markissen Das Bhatter and Purnalal Bhatter for a term of 99 years with effect from May 1, 1921.

4. Subsequently Sital, by a registered deed of arpannama dated February 13, 1929, dedicated the said premises to the deity Sri Sri Iswar Sitaram Jew and appointed himself as the first *sebait* and laid down the line of devolution of *sebaitship*. The lessees attorned tenancy and paid rent to the deity through the *sebait*. By a subsequent registered deed dated August 28, 1940, the lessees, with the consent of the lessor, transferred and assigned their leasehold rights for the remaining period to one Hukum Chand Electric Steel Co. Ltd., subsequently re-named as

Bhartia Electric Steel Co. Ltd. The said lessee continued to pay rent in terms of the lease deed dated May 10, 1921.

5. By a registered deed of assignment of lease dated March 26, 1949, Bhartia Electric Steel Co. Ltd. assigned the remaining tenure of the lease unto Ram Kumar Agarwalla, Om Kumar Mithal, Monohar Lal Mithal, Ram Gopal Mithal, Ramanand Mithal and Badri Prasad Mithal, all carrying on business under the name and style of 'M/s Ram Kumar Agarwalla and Bros.' from 4, Lyons Range, Calcutta. All of them expired, leaving behind the defendants as their heirs and legal representatives.

6. Sital died on August 16, 1929, leaving his only son Panchanan as the sole *sebait* in accordance with the line of succession as laid down in the deed of arpannama. Panchanan, by his Will dated September 6, 1929, appointed his wife Asmantara as the sole *sebait* as well as sole executrix.

7. Panchanan died on September 20, 1932, leaving behind his widow Asmantara and three daughters, namely, Ashalata, Kanaklata and Diptilata.

8. The Will of Panchanan was probated on January 6, 1933 and Asmantara became the sole *sebait* by virtue of the said probated Will.

9. Asmantara died on January 18, 1939. Thereafter dispute arose between her three daughters regarding *sebaitship* of the deity. Kanaklata and Diptilata filed against Ashalata in this court a suit, bearing No. 946 of 1948, which was disposed of on consent on January 8, 1951, thereby declaring Kanaklata and Diptilata to be the joint *sebaits*, excluding Asmantara.

10. Kanaklata died on October 9, 2002, leaving Diptilata as the sole *sebait.*

11. The lessees and their successors/assignees accepted Diptilata as *sebait* by attornment and payment of rent to her.

12. By a registered deed dated August 27, 2008, Diptilata appointed proforma defendant no. 35 (Satrajit), the son of her sister, and Ruby (wife of Satrajit) as *sebaits* of the deity.

13. Diptilata died on January 29, 2010.

14. The plaintiff no. 1 Ruby contended that she, along with her husband, proforma defendant no. 35 thus became the only *sebaits* of plaintiff no. 2, being the deity.

15. On the strength of such *sebaitship*, the plaintiffs instituted the suit, bearing Title Suit No. 3050 of 2012 (Serial No. 13 of 2012).

16. Some of the other defendants, not being the present petitioners, filed an application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that the notice to quit served upon the defendants was defective, in the absence of three months' notice under Section 108(m) of the Transfer of Property Act prior to the suit, and on the ground that the quit notice covered only a portion of the let-out property. The Trial Court rejected the said application under Order VII Rule 11 of the Code vide order dated April 30, 2013. Subsequently, the present petitioners, being the defendant nos. 6(a), 6(c) and 6(d), took out another application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint, alleging that the plaintiff no. 1 Ruby Ganguly was not a *sebait* of the plaintiff no. 2-deity and had no *locus standi* to institute the suit, that the suit was vexatious and that no clear right to sue appears from

the averments made in the plaint. It was further alleged that no documents in support of the plaintiffs' claim were disclosed in the plaint.

17. The plaintiffs filed a written objection to the said application for rejection of plaint.

18. An application under Order XIV Rule 2 of the Code was also filed by defendant no. 27 in similar tune with the application for rejection of plaint.

19. Vide order dated March 17, 2018, the trial court rejected both the said applications, under Order XIV Rule 2 and under Order VII Rule 11 of the Code of Civil Procedure.

20. The present petitioners have taken out the instant revisional application against such dismissal of the application for rejection of plaint.

21. Learned senior counsel appearing for the petitioners argues that the plaint does not disclose any cause of action. It is argued that, prior to the arpannama dated February 13, 1929, Sital had created a debottar estate by a deed dated March 31, 1922. As per the said deed, Sital and Rajlakshmi, his wife, would be the first *sebaits*. After Sital's demise, his son Panchanan would be *sebait.* If Panchanan pre-deceased Sital, his eldest male descendants would be *sebaits*. In the event Panchanan died without having any son or grandson, the grandson from his daughter would become *sebait.*

22. It is further argued that Ashalata had filed against Kanaklata and Diptilata a Suit, bearing No. 4867 of 1952, challenging the consent decree dated January 8, 1951 passed in Suit No. 9461 of 1948 (filed by Kanaklata and Diptilata against Ashalata). Suit No. 4867 of 1952 was disposed of on August 3, 1955 without entering into the challenge as to the consent decree, on

the ground that Ashalata was married while Kanaklata and Diptilata were unmarried as on the date of the consent decree, that is, January 8, 1951. It was held that the rule of succession provided that unmarried daughters would take their father's property in preference to married daughters and thus, Kanaklata and Diptilata were entitled to *sebaitship* in exclusion of Ashalata.

23. It is argued further that, in a connected appeal in respect of the self-same property, it was held by the Privy Council that the deed of 1929 had in law no effect upon the previous dedication of 1922 and that the provisions made by Sital for devolution of the *sebaitee* are to be found solely in the deed of 1922. The said judgment was reported at *LXX Indian Appeals 57 [Bhabatarini Debi (since deceased) vs. Ashalata Debi and others]*.

24. It is argued on behalf of the petitioners that the said facts were suppressed in the plaint. In view of the provisions of the 1922 deed, the right of *sebaitship* could only flow from the line of succession stipulated in the arpannama or at best the natural line of succession of Panchanan.

25. Plaintiff no. 1, who claims to represent the plaintiff no. 2-deity as its *sebait* , was the grand daughter-in-law of Panchanan and thus, by no stretch of imagination, the descendant of Panchanan, let alone a male descendant. Since Satrajit himself executed the deed of *sebaitship* dated August 27, 2008, as mentioned in the plaint, Satrajit (defendant no. 35), was in good health and available as a *sebait.* Since Satrajit was not arrayed as a plaintiff to represent the deity as a *sebait,* the suit was not maintainable at the instance of Ruby, since she did not have any *locus standi* to represent the deity.

26. It is argued that the defendants are not precluded by the provisions of Section 116 of the Evidence Act from denying the *locus standi* of Ruby, since admittedly the defendants paid rent last in February, 2007 and Ruby was appointed as *sebait* on August 27, 2008, as disclosed in the plaint itself. Therefore, there arose no occasion for the defendants to ever pay any rent to Ruby Ganguly and/or to have acquiesced to the status of Ruby as a *sebait* of the deity.

27. It is further argued on behalf of the petitioners that the challenge preferred by Ashalata against the consent decree dated January 1951, on the ground of fraud and misrepresentation, was not decided on merits on such aspect of the challenge. The challenge of Ashalata was turned down solely on the premise that Ashalata, being a married daughter, had no right to be appointed as *sebait*, being superseded to such post by her unmarried sisters, Kanaklata and Diptilata. Such being the sole premise of the dismissal of Ashalata's challenge, only Ashalata was bound by the decree. The heirs of Ashalata, who were entitled to inherit *sebaitship* directly as male descendants of Panchanan himself, both under the deed of arpannama dated March 31, 1922 and under the normal rule of succession, and not through Ashalata, were not bound by the decree suffered by Ashalata. As such, the consent decree dated January 8, 1951 bound only Ashalata and not her heirs as far as the question of *sebaitship* was concerned.

28. Thus, it is argued that the defendants were entitled to *sebaitship* and Ruby was not entitled to such office from any perspective.

29. The other limb of arguments of the petitioners is that since the arpannama dated March 31, 1922 and the registered deed of appointment of *sebait* dated August 27, 2008 were not

annexed to the plaint, the plaint was liable to be rejected by operation of Order VII Rule 14 (2) of the Code of Civil Procedure. In this context, learned senior counsel for the petitioners cites a judgment reported at *(2012) 8 SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee].*

30. Learned senior counsel for the petitioners argues that since the suit was based on the registered deed of arpannama dated February 13, 1929, which had been held to be inoperative in the Privy Council judgment reported at *70 Indian Appeals 57,* the plaint ought to have been rejected on such score alone. In this context, the petitioners place reliance on the judgment of this Court rendered in *Suit No. 3098 of 1952 [Sm. Ashalata Debi vs. Sm. Kanaklata Debi and others]* dated August 3, 1955. It is argued that this Court decided the challenge of Ashalata to the consent decree only on the premise that the consent decree gave to Ashalata what in law she was entitled to and all questions of fraud, undue influence, misrepresentation and want of legal advice were unnecessary to be gone into.

31. Learned senior counsel for the petitioners next places a judgment rendered by a co-ordinate bench of this Court on August 8, 2014, wherein the learned Single Judge held inter alia that in the partition suit from which the matter arose, the landlord-lessor was made a party. The suit concerned was one for partition between lessees in respect of their leasehold rights in the suit property. In such suit, the plaintiff no. 2-deity, Kanaklata and Diptilata were arrayed as defendant nos. 1 to 3, although no relief was claimed against them. In the said matter, Ruby Ganguly (present plaintiff no. 1) was permitted to represent the present plaintiff no. 2-deity, but

the Court did not enter into the question as to whether Ruby was authorized or empowered to act as *sebait.* It was, in fact, observed by the learned Single Judge that even if one accepts that Ruby was not competent to file the application for addition of party, the fact remained that the Court was required to preserve and protect the interest of the deity and to see that the deity should not be dragged into an unnecessary litigation where the presence of the deity was not required. In the said case it was held that the applicants therein had all through recognized Diptilata, and subsequently Satrajit and Ruby Ganguly as *sebaits,* and as such could not make a *volte face* and deny the *sebaitship* of Ruby.

32. However, it is argued, the present petitioners did not make any payment of rent to Ruby Ganguly or enter into an agreement with Ruby Ganguly for sale of any property, which were the bases on which the parties therein were held to be estopped from challenging the *sebaitship* of Ruby. Thus, the said order dated August 8, 2014 passed by a co-ordinate bench in Civil Suit No. 459 of 1987 could not bind the present petitioners or attribute the principle of estoppel, as embodied in Section 116 of the Evidence Act, to the present petitioners.

33. It is also argued on behalf of the petitioners that on the date of execution of the purported registered deed of appointment of *sebait* dated August, 2008, both Diptilata and Satrajit were alive and Ruby Ganguly could not have been appointed as a *sebait* in law. Moreover, the purported deed dated August 27, 2008, a copy of which has been produced for the first time in the present revision only, constantly refers to the arpannama dated February 13, 1929, which was declared by the Privy Council to be ineffective and inoperative. The arpannama dated March 31, 1922, which held the field, was never referred to in the said deed of

2008. The deed, moreover, suppresses the existence of the heirs of Ashalata and Kanaklata, who could be possible *sebaits.* As such, the plaintiff no. 1 could not claim *sebaitship,* in any event, on the basis of the 2008 document.

34. As regards the operation of Order VII Rule 14 of the Code, it has been argued by the plaintiff that the said point was never urged before the trial court and as such could not be argued for the first time before the revisional court. However, this point was raised in paragraph no. 9 of the petitioners' application under Order VII Rule 11 of the Code, wherein it was specifically mentioned that no document in support of the purported claim of Ruby had been disclosed in the plaint.

35. It is further pointed out that the Trial Court, in the order impugned herein, had referred to the plaintiff no. 1 having not filed the deed of 2008. As such, the said point was raised in the Trial Court and, as such, the petitioners are at full liberty to argue the same in this Court as well.

36. The petitioners next submit that all the *sebaits* must have joined as plaintiffs in the suit and the suit at the instance of Ruby, who was not even a *sebait*, was not maintainable on behalf of the deity. In such context, the petitioners relied on a judgment reported at *61 Indian Appeal 35 [Baraboni Coal Concern Ltd. vs. The Servitors and Shebaits of Sree Sree Gopinath Jiu, Gokula Nanda Mohanta Thakur and others].*

37. The right to bring a suit in respect of the property of a Hindu idol is vested only in the *sebait* and not in the idol, although the idol is the owner of the property. Only in special

circumstances one of the *sebaits* could institute a suit on behalf of the deity, making the other *sebaits* as defendants.

38. Lastly, it is argued that Ruby Ganguly had no right to sue and as such, the plaint ought to have been rejected under Order VII Rule 11 (a) of the Code of Civil Procedure. In support of such proposition, the petitioners relied on the following judgments:

i. *(2012) 8 SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society vs. Ponnjamman Educational Trust];*

ii. *(2003) 1 SCC 557 [Saleem Bhai vs. State of Maharashtra];*

iii. *(1977) 4 SCC 467 [T. Arivandandam vs. T.V. Satyapal].*

39. Thus it is argued by the petitioners that the Trial Court ought to have rejected the plaint.

40. The plaintiffs/opposite party nos. 1 and 2 countered the arguments made on behalf of the petitioners. Learned senior counsel for the plaintiffs argued that non-disclosure of the deed of appointment dated August 27, 2008 could not be relevant for the purpose of Order VII Rule 11 of the Code of Civil Procedure. The plaintiffs had not sued upon the said deed of appointment at all. The cause of action of the suit was termination of the lease. Even going by the case cited by the petitioners, reported at *(2012) 8 SCC 706 [Church of Christ Charitable Trust and Educational Charitable Society vs. Ponnjamman Educational Trust] (supra),* the deed of appointment referred to in the plaint should be incorporated by reference in the plaint and, as such, disclosed by implication. Order VII Rule 14(3) of the Code gives the plaintiffs an

opportunity to produce in court later, with the leave of court, a document which ought to have been produced with the plaint at the time of filing it. This was also held in *Church of Christ (supra).*

41. Moreover, since the point of such alleged non-disclosure was not taken specifically either in the application for rejection of plaint or in the rejoinder or at the time of argument in the court below, and since it was not a pure question of law, the same could not be urged at this juncture in the revisional application for the first time. For such proposition, learned senior counsel for the opposite party nos. 1 and 2 relies on a division bench judgment of this Court reported at *19 CWN 208 [Mohamaya Debi vs. Haridas Haldar and anr.].*

42. It is further argued that there could not be an application under Order VII Rule 11 of the Code for non-compliance of Order VII Rule 14 (1) and Rule 14(2) of the Code. In this context, the following judgments are cited:

i. *2009 A I H C 51 [B. Mruthyunjayappa & Anr. Vs. Gurumurthy & Ors.];*

ii. *(2009) 4 Punjab Law Reporter 103 [Punjab Beverages Pvt. Ltd. vs. Col. A.S. Judge].*

43. It is next argued on behalf of the plaintiffs that, in any event, the appointment of *sebaits* could be construed to be neither under the 1929 arpannama nor the 1922 arpannama. After demise of Panchanan, his sister Bhabatarini had filed a suit claiming that her sons, and not Panchanan's daughter, could be *sebaits* under the arpannama dated 1922 and 1929. In such suit,

it was held by the Privy Council *[LXX Indian Appeals 57,* as referred to above] inter alia that upon the demise of Panchanan, the specific provision validly made by Sital as founder with respect to succession of the office of *sebait* stood exhausted and the *sebaitship* reverted to Sital, and through him his legal heirs. On that premise, *sebaitship* on the death of Sital passed to Panchanan as his sole legal heir.

44. *Sebaitship* being a property, is both heritable as well as disposable. Panchanan thus had complete heritable and descendible right of *sebaitship* so that on his death his *sebaitship* would pass to his legal heirs.

45. It is argued that Kanaklata and Diptilata obtained a consent decree against Ashalata which was subsequently challenged by Ashalata. The challenge culminated in the Court holding that Ashalata, as a married daughter, was not a legal heir of Panchanan and thus *sebaitship* passed to Kanaklata and Diptilata. Kanaklata died on October 9, 2002 and thereafter Diptilata (who was issue less), became the sole *sebait.* Diptilata appointed her nephew (Kanaklata's son) Satrajit, since deceased, and his wife Ruby (plaintiff no. 1) as *sebaits* by the registered deed of appointment dated August 27, 2008. As such, even if the reference to the arpannama dated February 13, 1929 is treated as a surplusage and irrelevant, Diptilata was undisputably a *sebait.* At least up to the devolution of *sebaitship* on Diptilata, the present petitioners had paid rent to her, thereby being barred by estoppel under Section 116 of the Evidence Act from disputing the *sebaitship* rights of Diptilata.

46. Not only was Satrajit and heir of Kanaklata and in any event was entitled to *sebaitship* as a class-I heir under the Hindu Succession Act, read with Section 15(2)(a) of the Act, even

under the arpannama, Satrajit was entitled to *sebaitship.* By placing reliance on a judgment reported at *50 CWN 14 [Sree Sree Sreedhar Jew vs. Kanta Mohan Mullick and ors.],* it was argued that although ordinarily all *sebaits* must join as co-plaintiff, in special circumstances, one or some only of the *sebaits* may institute a suit, and the others must be made defendants**.** In the plaint, it is argued, it was sufficiently averred that Satrajit was not in a condition to sign the plaint and as such Ruby being one of the *sebaits* appointed by Diptilata was very well entitled to represent the deity as a *sebait* impleading Satrajit as a co-defendant.

47. Learned senior counsel for the opposite party nos. 1 and 2 next cites a judgment reported at *AIR 1915 Cal 161 = 19 CWN 208 [Mohamaya Debi vs. Haridas Haldar and anr.]* in support of the proposition that alienation of a religious office may be validly made in favour of a person standing in the line of succession and not disqualified by personal unfitness. Ruby, being the wife of Satrajit, who, in turn, was an heir of Kanaklata, a daughter of Panchanan, was in any event in the line of succession. In fact, since Satrajit has died in the meantime, Ruby has inherited the estate of Satrajit as his widow, including the *sebaitship.* As such, the plaintiff no. 1 Ruby was very well entitled to maintain the suit as a *sebait* of the plaintiff no. 2-deity.

48. It is lastly argued on behalf of the opposite party nos. 1 and 2 that the present revision has been preferred to stall the proceedings and nullify the judgment of this Court dated August 8, 2014, as referred to above. The said revisional application is nothing but an abuse of the process of Court by rendering the direction dated January 25, 2018, passed by this Court for expeditious disposal of the suit, nugatory and as such is an abuse of the process of Court. Thus, the revisional application ought to be dismissed with costs.

49. The only question which arises for consideration in the present revisional application is, as to whether the plaint ought to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

50. It is well-settled that such a question is to be decided on a plain and meaningful reading of the plaint and at best documents referred to in the plaint.

51. The cause of action of the present suit is the alleged breach of covenants in the lease deed, which have been sufficiently disclosed in the plaint.

52. Although it is legitimate to argue that the *prima facie* title of the plaintiffs in the suit property and a clear right to sue are to be transparent from the plaint itself, a plaint can be rejected only when no cause of action is disclosed for filing of the suit, and not by adjudicating as to whether the plaintiffs have any cause of action at all. 'Having no cause of action' is entirely different from 'disclosing no cause of action'. While the former entails a detailed enquiry on merits, the latter only involves a plain reading of the plaint, upon taking the averments in the plaint to be sacrosanct.

53. If such an approach is adopted in the present case, it is seen that the plaintiffs have disclosed sufficient cause of action for filing the suit. Although no copy of the deed of 2008 is annexed to the plaint, it has been averred that Diptilata assigned the *sebaitship* in favour of plaintiff no. 1 and defendant no. 35 (since deceased). Since it is specifically pleaded in the plaint that defendant no. 5 was not in a physical condition, being of ill-health, to sign the plaint when the suit was instituted, the plaintiff no. 1, being the other *sebait,* was well within her rights to

represent the deity (plaintiff no. 2) and filed the suit on behalf of the deity, impleading defendant no. 35 as a defendant. The principles of law laid down in the cited judgments in this regard were adhered to in adopting such modus operandi.

54. It is further seen that the plaint alleges that the defendants, including the present petitioners, paid rent upto devolution of *sebaitship* to Diptilata. As such, the petitioners are debarred by estoppel under Section 116 of the Evidence Act from questioning the *sebaitship* of Diptilata. Since Diptilata has been averred to have assigned her *sebaitship* to plaintiff no. 1 and defendant no. 35 (since deceased), it is evident that, at least as per the plaint averments, the plaintiff no. 1 prima facie had a right to maintain the suit as a *sebait* of the plaintiff no. 2-deity.

55. The ingredients of inheritance are also embedded in the plaint, although not in an organized manner, to trace the line of succession from Panchanan to Satrajit and to bring Ruby (plaintiff no. 1), within the perspective of the line of succession, as envisaged in the judgment reported at *AIR 1915 Cal 161 [Mohamaya Debi vs. Haridas Haldar and anr.].* Thus, the plaintiffs have an arguable right to sue and cannot be said not to have disclosed any cause of action for instituting the suit.

56. As regards the judgment of 2014 passed by a co-ordinate bench of this Court, the same is not germane for the purpose of deciding the instant matter, since the learned Single Judge, although permitted the present plaintiff no. 1 to represent the deity, had proceeded on the premise that the applicants therein had acquiesced to the *sebaitship* rights of Ruby, which is not applicable to the present petitioners.

57. However, even without taking resort of such judgment, Ruby appears to have sufficient right to sue as a *sebait* on behalf of the plaintiff no. 2-deity, and as such the plaint cannot be rejected at this juncture on the finding that the plaintiff no. 1 (Ruby) has not disclosed a clear right to sue.

58. It is well-settled that one of the plaintiffs/*sebaits* can maintain a suit on behalf of the others under certain circumstances. Such circumstances having been disclosed in the plaint in the form of ill-health of Satrajit, subsequently vindicated by the demise of Satrajit, the plaint could not have been rejected in any event. In fact, upon the demise of Satrajit, Ruby inherits the estate of Satrajit including *sebait* rights, which has been held to be heritable and alienable by this court and the Privy Council, as reflected from the judgments cited by the parties, as discussed above.

59. As regards the applicability of Order VII Rule 14 of the Code, as rightly argued on behalf of the opposite party nos. 1 and 2, Rule 14(3) of Order VII provides the remedy and sanction for non-production of a document referred to in the plaint. The said provision provides a lease of life to the plaintiff to produce such a document with the leave of the Court to be received in evidence. This further indicates that the sanction against the non-production of such a document could only be the plaintiff being precluded from producing such document in evidence at the hearing of the suit. Rejection of plaint is not a remedy provided for such an infraction of Order VII Rule 14 of the Code. As such, the argument advanced by the petitioners on that score also has to be turned down.

60. In view of the discussions made above, it is clear that the plaintiffs have made out in their plaint a sufficient right to sue and have disclosed cause of action entitling them to maintain the suit for recovery of possession and arrears. The Court could not, at this premature stage, delve into the merits of the respective cases of the parties and such a consideration has to be left for the trial court to be gone into at the hearing of the suit, upon adduction of evidence and advancement of arguments of the parties.

61. Although as regards the dismissal of the previous application for rejection of plaint, the same does not affect the present application under Order VII Rule 11 of the Code, since the previous application was preferred by other defendants than the petitioners and on different grounds, the above circumstances otherwise justify the trial court to have dismissed the second application under Order VII Rule 11 of the Code on its merits.

62. As such, the impugned order suffers from no illegality and/or jurisdictional error.

63. Accordingly, C. O. No. 1251 of 2018 is dismissed, thereby affirming the impugned order. There will be no order as to costs.

64. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with requisite formalities.

(Sabyasachi Bhattacharyya, J.)