

IN THE COURT OF SUB-JUDGE-II, PATNA CITY
DIST-PATNA
TITLE SUIT NO. 125/2008

09-02-2024 The case was called for. This case is pending for order on petition filed on behalf of defendant no. 01, U/s-7 Rule-11(a) & (d) of C.P.C dated 09-01-24. Rejoinder petition filed on behalf of plaintiff dt. 24-01-24 is on record but Ld. Counsel on behalf of defendant no.-01. Heard both parties and perused the record.

After sincere perusal of the petition, It is clear that defendant no.-1 contended in his present petition that the plaintiff no.-2 is an unregistered firm and in view of section-69 of Indian Partnership Act.-1932 it is mandatory that an unregistered firm can not sue against the partner or any other person. Therefore, plaintiff have got no right to suit against the defendant and as such suit is barred by law. Therefore, the plaint is liable to rejected. On the other hand by the way of reply plaintiff stated that the present petition is not maintainable in law because the applicant who is defendant no.-1 in this case has admitted in his W.S Para-9 that the plaintiff firm is registered under the Partnership Act.

Now, I would like to mention legal provision before reached the conclusion. it is useful to refer the relevant provision:-**Order 7 Rule 11 CPC** “**11.Rejection of plaint.**—The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by

the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In such situation it is the duty of the Court to scrutinise the averments/pleas in the plaint. From the going through the plaint it clearly appears that there is no ground available for the defendant no.1 as per the provision of Order-VII, Rule-11 to reject the same. Accordingly, the application of the defendant no.-1 dt. 09.01.24 filed under order-VII, Rule-11 CPC is hereby **Rejected**. Put up on for further proceeding of this case.

Dictated

Sub-judge-II
Patna City