

Title Suit No. 147 OF 14 CIS 12303 OF 14

12-07-2019

Today is fixed for passing order relating to the petition filed by the defendant U/o-7 Rule-11 of Code of Civil Procedure dated 30.01.2017.

Both parties file hazira. The petition is taken up for passing order.

The defendant filed W/O on 16.02.2017.

By filing instant petition the defendant prayed for rejection of plaint under provision U/o-7 Rule-11 (a), (b) and (d) of Code of Civil Procedure. In the said petition, the defendant stated that the instant suit have been filed on the basis self-invented illusory cause of action with guilty mind and on suppression of fact.

The plaintiff filed W/O denying the contention raised by the plaintiff and averred certain fact.

During hearing the contention raised by both parties this Court finds that the defendant's U/o-7 Rule-11 is based on certain facts regarding the fact of dispossession for which the plaintiff filed the instant suit. During hearing the Ld. Advocate for the defendant relied on certain police report and submitted before the Court that from the said report it would be revealed that the facts regarding dispossession of the plaintiff is not true. The Ld. Advocate for the defendant relied on the decision reported on 2015 (4) ICC 417 CAL and submitted that during hearing of petition U/o-7 Rule-11 the Court can rely on the other document apart from the plaint. Replying on the said judgment, the defendant tried to impress upon the Court the final report filed before the Ld. ACJM Court, Bidhannagar case

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No. 177/16 but the this Court is not inclined to accept the said contention as raised by the Ld. Advocate by the defendant because in the said judgment as cited by the Ld. Advocate, His Lordship referred the document which are the judgment and order passed by the Court of Appropriate Jurisdiction and in deciding the case of resjudicata the said judgment and order of the Court can be relied upon but the facts and circumstances of the instant case is not at par with the referred case simply because in the instant case the defendant relied upon the final report of criminal case which cannot be said to have the same probative value of judgment and order passed by Court of Appropriate Jurisdiction.

It has already been stated above that all other claim of the defendant by filing the instant petition based on certain facts affirmed by the plaintiff and denied by the plaintiff and same cannot be adjudicated without trial. On the basis of the above observation this Court is not inclined to allow the prayer of the defendant.

Hence it is

O R D E R E D,

that petition filed by defendant U/o-7 Rule-11 is rejected on contest and disposed of accordingly.

Fix **20-11-2019** for injunction hearing of the suit along with the petition U/O-39 Rule-4.

D/c by me

CJ (Jr. Divn.)
Bidhannagar

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Bidhannagar