

**TS 31/2014**

Order no. 56 dated 23.11.2015

Today is fixed for hearing petition under section 151 C.P.C filed by the defendant nos. 2 to 5 prying for rejection of the plaint due to non-compliance of the Court's order no.46 dated 05.05.2015.

Heard both sides on facts and law. Considered. Thereafter this record is taken up for passing necessary order in disposal of the petition of the defendants.

The contention of the petitioners is that plaintiff did not amend that the plaint in compliance of the order no.46 dated 05.05.2015.

Ld Advocate of the plaintiffs contended that they never demanded amendment of plaint and the job of the ministerial staff was imposed upon them which cannot be said to be proper order and the order no. 46 is required to be recalled/modified. However the written objection filed by the plaintiff on 30.09.2015 against the petition of the petitioner did not state so.

I have gone through the record carefully. In order no.46 while disposing the petition under order I rule 10(2) CPC asked the plaintiffs to amend the plaint incorporating the changes of addition of the party. By the said order defendants were added though the petition was filed by the proforma defendant and the same was allowed. Order no.46 was passed taking into consideration of the provision of order I rule 10(4) CPC and the non-compliance of the said order was duly effected by the order dated 26.06.2015.

Rejection of the plaint comes within the provision of order VII rule 11 CPC. The said provision categorically stated about the situations when the plaint will be rejected. The plea taken by the defendant/petitioner is not coming within any of the category of the provision of order VII rule 11 C.P.C. Section 151 CPC cannot be invoked in this situation as the same is neither required for ends of justice nor to prevent abuse of process of the court. The suit can proceed without the presence of the added defendants and the plaintiff will suffer the consequence of the same. Therefore the prayer under this petition of the petitioner cannot be allowed.

Hence it is

**ORDERED**

that the petition under section 151 CPC is rejected on contest and without cost.

Fixing 01.12.2015 for Peremptory hearing of the suit.

D/c by me.

Judge, S.C.C., Sealdah.

Judge, S.C.C., Sealdah.