

JO Code: WB01068

Order No.22

Date: 18.12.23

Today is fixed for passing order.

The non-maintainability petition dated 05.11.2019 is taken up for hearing.

Heard both sides.

Perused the petition and materials on record.

The petition is filed by defendant no. 5. During hearing ld advocate for the defendant submitted that this is a representative suit as Kakdwip Court Bar Association is an unregistered body and the plaintiff should have taken leave of the Court u/o.1 Rule 8 CPC for proceeding against said Bar Association. But no such leave was taken by the plaintiff before filing of this suit. Ld advocate further submitted that all the members of Bar Association are the necessary party in this case. Ld advocate further submitted that as no leave u/o.1 Rule 8 CPC was taken by the plaintiff, the suit is liable to be dismissed. In this connection ld advocate referred a judgment of Hon'ble High Court, Calcutta passed in F.M.A. No. 556 of 2008 (Gandhabanik Mahasabha and Anr. Vs Gandhabanik Mahasabha, Bardhaman Sakha Samity and Anr.) and a judgment of Hon'ble Bombay High Court passed in Writ Petition No. 2327 and 2328 of 2018 where it was decided by Hon'ble High Court that provision of Order 1 Rule 8 of CPC could not be resorted to by party at a stage when it is likely to cause grave prejudice either of parties.

On the other hand the plaintiff submitted that this is not a representative suit and she does not have grievance against all the members of the Bar Association and has not prayed any relief against them. She further submitted that she has filed this suit with the help of some of the advocates of the Bar Association. The plaintiff has further submitted that she would take leave of the Court u/o. 1 Rule 8 of the CPC if it required at later stage as leave u/o. 1 Rule 8 of CPC can be taken at any stage. In this regard plaintiff has referred a judgment of the Hon'ble Supreme Court in Civil Appeal No. 1817 of 2005 (Krishan Vasudevan and others Vs Shareef and others) and a judgment passed by Hon'ble Rajasthan High Court in S.B.Civil Writ Petition No. 5331/2020 (Prabhudas and others Vs Hanumandas Swami and others).

On hearing and perusal it appears that the plaintiff denied that this is a representative suit as she does not have grievance against each and every member of the Bar Association. This is very initial stage of this suit. Issues are not yet framed.

In such circumstances and in view of the judgment of Hon,ble Supreme Court referred by the ld advocate by the plaintiff I am not inclined to dispose of the non-maintainability petition at this stage.

Considering the fact and circumstance of this case I am of the view that the nature of the suit as to whether it is representative suit or not shall be decided at the time of final disposal of the suit after framing a separate issue in this respect.

To 25.01.2024 for discovery and inspection.

Sd/-

ACJM-cum-CJSD, Kakdwip