

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16099/2011

(From the judgement and order dated 28/02/2011 in  
of The HIGH COURT OF CALCUTTA)

FMA No. 5/2011

BOARD OF TRUSTEES FOR PORT OF KOLKATA

Petitioner(s)

VERSUS

PAHARPUR COOLING TOWER LTD.

Respondent(s)

(With prayer for interim relief and office report )

Date: 15/07/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s)

Mr. Parag P. Tripathi,ASG  
Mr. A.V. Rangam,Adv.  
Mr. Buddy A. Ramganadhan,Adv.  
Ms. Richi Bhardwaj,Adv.

For Respondent(s)

Mr. Rana Mukherjee,Adv.  
Ms. Sswati Sinha,Adv.  
Ms. Taruna A. Prasad,Adv.  
M/S Fox Mandal & Co.,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard learned counsel for the petitioner  
and learned counsel for the respondent.

The trial court by order dated 1.10.2010  
allowed the application under Order 7 rule 11

C.P.C. filed by the petitioner and has held  
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that the suit filed by the respondent was  
liable to be dismissed on the ground that  
notice under Section 120 of the Major Port  
Trusts Act, 1963 had not been served. On  
appeal, the High Court has held that the suit  
cannot be rejected under Order 7 Rule 11 of

CPC on the ground that notice under Section 120 of the Major Ports Trust Act has not been served. The High Court has held that once the written statement is filed and issues are framed, the matter can be considered and appropriately dealt with.

Rejection of a suit under Order 7 Rule

11 can be dealt only with reference to the plaintiff averments. Therefore, we find no error in the order of the High Court. It is open to the defendant-petitioner to file a written statement raising this contention among others and request the court to decide the issue relating to non service of notice under Section 120 as a preliminary issue. If such a contention is raised, the trial court will consider it as a preliminary issue. With this observation the special leave petition is dismissed.

(O.P. Sharma)

( M.S. Negi )

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Court Master

Court Master