In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Sandip Kumar De

F.M.A. No. 712 of 2025
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CAN 1 of 2025

Badri Narayan Bhatter and Another

-Versus-

Hari Narayan Bhatter and Another

For the appellants	:	Mr. Siddhartha Banerjee, Mr. R. Karmakar, Mr. Soumyajit Majumder, Mr. Abhisek Baran Das, ... Advs.
For the respondent no. 1	:	Mr. Rachit Lakhmani, Mr. Shubham Gupta, Mr. Rajsekhar Bal Bakshi, ... Advs.
For the respondent no. 2	:	Mr. Narayan Prasad Agarwala, Ms. Nipa Mallick, Ms. Nandini Mazumdar, ... Advs.
Heard on	:	20.08.2026 & 24.08.2026
Reserved on	:	24.08.2026
Judgment on	:	31.08.2026

Sabyasachi Bhattacharyya, J.:-

1. The plaintiffs in a partition suit have preferred the present appeal. There are two components to the impugned order. The first is that an application under Order VII Rule 11, read with Section 151, of the Code of Civil

Procedure (for short, "the Code"), filed by the defendants/respondents was disposed of by directing the plaint to be returned to the plaintiffs for being presented before the proper forum on the ground that the suit property is grossly undervalued only for the purpose of seeking jurisdiction.

2. Secondly, the learned Trial judge dismissed the plaintiffs' application for appointment of Receiver under Order XL Rule 1, read with Section 151, of the Code.

3. The appellants are aggrieved by the return of plaint, contending that the application under Order VII Rule 11 of the Code ought to have been dismissed as a whole, and also by the dismissal of their Receiver application.

4. On the other hand, the defendants/respondents are aggrieved by the refusal of the learned Trial Judge to reject the plaint and merely returning it for presentation before the appropriate Court/forum. Initially, the defendants/respondents had taken out a separate appeal, bearing FMAT No. 257 of 2025, which was dismissed as not maintainable by this Court *vide* Order dated April 8, 2026, since no appeal lies against the rejection of an application under Order VII Rule 11 of the Code. It was further recorded in the said order that the said appeal could not also be treated as a cross-objection, since it was filed beyond the limitation period of 30 days for filing cross-objections and an appeal which was not maintainable at the inception, could not be converted to a cross-objection by glossing over the bar of limitation at the juncture of such conversion. However, simultaneously, it was observed by this Court that the Court can enter into the merits of all facets of the order impugned in the main appeal as well as consider the grant of further or other order or orders which ought to have passed by the learned Trial Judge under Order XLI Rule 33 of the Code. Accordingly, liberty was granted to the present respondents, who were appellants in the other appeal, to urge all grounds taken in the memorandum of the said appeal by way of arguments advanced in the capacity of respondents in the present appeal, within the contemplation of Order XLI Rule 33 of the Code.

5. Since the challenge by the respondents, if allowed, would have the effect of rejection of the plaint, thereby rendering the appellants' Receiver application infructuous in any event, the respondents are invited to argue first.

6. Learned counsel appearing for the respondents argues that the plaint ought to have been rejected in view of suppression of material facts by the plaintiffs/appellants which, if disclosed, would render the suit barred by law at the inception. Thus, by clever drafting, the suit has been filed to harass the defendants and to re-agitate barred causes of action.

7. While elaborating such contention, learned counsel submits that there was a previous arbitral proceeding between the parties' predecessors-in-interest. Two family members were appointed as arbitrators by consent of the parties, given in connection with an earlier partition suit filed by the plaintiffs/appellants' predecessors. The said arbitration culminated in an award dated February 9, 2002, which has never been challenged, thus having attained finality. Such award operates as *res judicata* and the self-same issues cannot be re-agitated afresh by the plaintiffs by filing the present suit.

8. Learned counsel submits that the bar incorporated in Section 10 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act"), precluding the number of arbitrators to be an even number, is not absolute, as held in *Narayan Prasad Lohia v. Nikunj Kumar Lohia and others*, reported at *(2002) 3 Supreme Court Cases 572*.

9. Apart from the bar of *res judicata*, the present suit, it is argued, is also barred by Order IX Rule 9 of the Code since the earlier partition suit was ultimately dismissed for default. Learned counsel for the respondents relies on *Sharada Sanhi and Others v. Asha Agarwal and Others*, reported at *2026 SCC OnLine SC 480*, for the contention that in such a situation, by operation of the maxim *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*, even if the principle of *res judicata* is not strictly applicable; when a particular cause of action has been brought before a competent court, the same party cannot be allowed to raise the very same issue again in another proceeding.

10. Thirdly, the respondents contend that the present suit is bad for non-joinder of the mother of the defendant/respondents, who is a necessary party, being the landlady of the tenants at the suit property and a co-owner thereof.

11. It is argued that although, in the Trust Deed dated February 13, 1984 executed by the original owner/settlor for twenty years, there was a restriction as to devolution of the property after dissolution of the trust only upon male heirs, by use of the expression "heirs" instead of "descendants", such restriction was meant only for the direct heirs of the first generation. Since such first generation of heirs have died, the restriction would not be applicable in the next generations. Accordingly, the mothers of the parties would also be co-owners in any event.

12. Learned counsel appearing for the respondents further contends the suit is palpably barred under Section 7(viii) of the West Bengal Court Fees Act, 1970 (for short, "the Court Fees Act"). As per the said provision, the suit has to be valued as per the market value of the subject-property if the reliefs of partition and separate possession to enforce the right to share on any property are claimed as reliefs.

13. By admitting in the plaint that the physical possession of the plaintiffs/appellants have now been confined to two rooms and a portion of the property, that the defendants are in exclusive control and inducting tenants as well as collecting rents, and by disclosure of the plaintiffs' address in the plaint to be different from the suit premises, as well as seeking a decree of mandatory injunction to disclose the true physical status of the property, the plaintiffs have admitted their ouster from the suit property. Thus, Section 7(viii) of the Court Fees Act is squarely applicable.

14. Moving on to the Receiver application, learned counsel for the respondents argues that the suit as well as the Receiver application were filed after a delay of more than two decades after the arbitral award. Such delay defeats equity. Moreover, exclusive possession was handed over to the defendants and the plaintiffs relinquished the suit property, as also indicated in a letter dated March 12, 2004, written by the plaintiffs.

15. That apart, the high tests required to be satisfied for appointment of a receiver under Order XL Rule 1 of the Code, which are more serious in nature than required to obtain an injunction, have not been made out at all by the plaintiffs. Unnecessary appointment of a receiver, despite the defendants collecting rent from their tenants, it is submitted, would operate as a stigma against the defendants, which is completely avoidable. Thus, it is submitted that the learned Trial Judge was justified in dismissing the receiver application, whereas the plaint ought to have been rejected as a whole in view of the material suppression and bars of law as indicated above.

16. In reply, learned counsel appearing for the plaintiffs/appellants argues that the so-called award dated February 9, 2002 was not a valid award under the Arbitration Act at all. Learned counsel places reliance on an Order dated July 22, 2002 passed in CS No. 266 of 2000, the earlier partition suit, by a learned Single Judge of this Court. In the said order, an application taken out for recalling of an earlier order dated September 25, 2000, whereby the disputes involved in the suit were referred to arbitration, was being dealt with. The learned Single Judge recorded that the time-limit for completion of the arbitration was extended on December 22, 2000 by consent. The contention of the defendants in the earlier suit, including the mother of the present defendants, was recorded to have been that the joint arbitrators had already made the award ready and it "could be made and published if extension was granted". Thus, it was admitted that there was no publication of the award till then, nor is there anything on record to indicate that subsequently such award was published in accordance with law at all.

17. Rather, the learned Single Judge went on to observe that without deciding as to the validity and legality of the two orders on consent, the Court was of the view that it could not grant any extension of the time-limit for completion of the arbitral proceedings under the provisions of the Arbitration Act. It was further observed that once the Court refers the dispute to arbitration under the provisions of Section 8 of the Arbitration Act, the Court dealing with the suit cannot pass any order and it becomes *functus officio* and if any order or direction was required, that should be obtained from the regular Arbitration Court. Accordingly, the application was rejected on such grounds, keeping it open for the parties to approach the regular Arbitration Court for obtaining necessary orders for extension. However, there is nothing on record to indicate that any such extension was at all obtained subsequently. Thus, the arbitrators had lost their mandate as stipulated under Section 29 of the Arbitration Act, after the expiry of the extended time and the award could not have been passed by them after the said period.

18. Secondly, it is submitted that the award relied on by the defendants is unstamped, although such an award is mandatorily required to be stamped under the West Bengal Stamp Act.

19. Thirdly, Section 10 of the Arbitration Act debars the appointment of even number of arbitrators, whereas two arbitrators were purportedly appointed in the present case.

20. Fourthly, under Section 31(3) of the Arbitration Act, an award has to necessarily contain reasons, unless the parties agree to the contrary. In the present case there is not even any pleading as to there being such agreement to the contrary, whereas the award is *ex facie* without any reason. Thus, there was no valid award in the eye of law on such count as well.

21. The plaintiffs/appellants, it is argued, were not parties to the arbitration agreement. Although their mother might have been a party thereto, the plaintiffs do not claim through their mother but stake independent claim to the suit property as co-owners. Thus, in any event, neither the arbitral proceedings nor the award purportedly passed therein binds the present plaintiffs.

22. Regarding the dismissal of the earlier partition suit for default, it is submitted by the appellants that such order, even if any, cannot be deemed to be one under Order IX Rule 9 of the Code, since a suit does not and cannot survive after reference of the same to arbitration under Section 8 of the Arbitration Act. As recognized by the learned Single Judge in the order referred to above, the Court becomes *functus officio* after having referred the matter to arbitration. Thus, nothing remains in the suit, precluding any scope of dismissal of the same for default in the sense as contemplated under Order IX Rule 9 of the Code. Hence, the bar under Order IX Rule 9 is not attracted in the present case at all. An order recording dismissal of the suit subsequent to reference under Section 8 of the Arbitration Act would at best be a formality to record that no suit remained on the board of the civil court by dint of its reference to arbitration.

23. Even otherwise, the cause of action for a partition suit is continuing in nature, whereas Order IX Rule 9 debars only a fresh suit on the self-same cause of action.

24. The purported letter dated March 12, 2004 (if any), it is submitted, was at best an agreement to relinquish the property but not a transfer of title. The said letter, even if construed to confer an actionable claim on the defendants, such claim did not fructify since no suit for specific performance was ever filed in respect thereof.

25. Learned counsel appearing for the appellants next argues that the non-joinder of the defendants' mother is irrelevant in the context, since, as per the trust deed, the property was to devolve on the male heirs of the two trustees after them. The mother of the defendants, not being a male heir, could not inherit any title to the property.

26. Moreover, the plaint cannot be rejected for non-joinder of necessary parties at the outset, without granting an opportunity to the plaintiffs to implead the omitted parties, even if the Court comes to the finding that the suit is bad for non-joinder.

27. Regarding court fees, learned counsel submits that Clauses (v) and (vi) of Section 7 of the Court Fees Act, respectively, relate to suits for 'possession' and 'recovery of possession', thereby distinguishing a suit asserting possession from a suit for recovery of possession. Thus, even if Clause (vi) is taken into account, *ad valorem* court fees were not required to be paid, nor was the suit required to be valued in terms of the market value of the subject property.

28. Insofar as Clause (viii) of Section 7 is concerned, it is argued that the question of relief being sought for separate possession comes into play only if the plaintiff has been excluded from possession of "the property of which he claims to be a coparcener or co-owner", meaning thereby the entire property. The plaintiffs have merely admitted that their physical possession has been restricted to two rooms and a portion of the suit property and not dispossession or ouster from the entire property in respect of which they claim to be co-owners. Thus, the said provision is not applicable at all, since no ouster from the entire property has been pleaded.

29. Even in a case where separate possession is sought, as per Clause (viii) of Section 7, the suit has to be valued according to the market value of the "share in respect of which the suit is instituted" and not the entire property. Even from such perspective, the valuation of the plaintiffs' claimed share comes within the pecuniary jurisdiction of the learned Trial Court.

30. It is next argued that the learned Trial Judge merely relied on an e-assessment slip produced by the defendants to hold that the suit was "grossly undervalued", without any inquiry under Section 11 of the Court Fees Act. It would be evident from the said document that it was obtained at the behest of the defendants unilaterally, the valuation being assessed on the basis of the character of the suit property as disclosed by them to the authorities. The e-assessment slip itself indicates that the property was shown as "commercial" and *bastu*, which explains the higher valuation at which the property was assessed. As per the disclosures made by the defendants themselves in their application under Order VII Rule 11 of the

Code, the rent earned from the property is meagre, thus excluding it from the purview of a "commercial" property. Otherwise, the property is admittedly residential.

31. Learned counsel further contends that the paradigm of the Court Fees Act, as evidenced, for example, in Sections 7 and 9 thereof, operates in respect of subject-matter *of* suits and not *in* suits and, therefore, is relatable to the reliefs claimed and not the subject-property, unlike, for example, Section 12 of the Commercial Courts Act, 2015.

32. Learned counsel cites *Mustafa Shah v. Dhanu Shah*, reported at *1966 SCC OnLine Cal 118*, in support of the above proposition.

33. Thus, it is submitted that the learned Trial Judge ought to have dismissed the application under Order VII Rule 11 of the Code outright even without returning the plaint on the erroneous finding that the suit was grossly undervalued.

34. Learned counsel appearing for the appellants next addresses the issues of Receiver and argues that the learned Trial Judge erroneously decided the application under Order XL Rule 1 of the Code first, only thereafter proceeding to hold that the Court had no jurisdiction. If, in the perception of the Court, it did not have jurisdiction, it could not decide on merits any interlocutory application or the suit further.

35. On merits, although the respondents argue before this Court that the plaintiffs/appellants acted on the purported award, it will be evident from Paragraph Nos. 39, 40 and 47 of the application under Order VII Rule 11 of the Code filed by the respondents themselves that such stand is contrary to the version of the respondents in the Trial Court.

36. Moreover, the invalid arbitral award, it is submitted, cannot be treated as a family arrangement or settlement, since admittedly it was supposed to be passed under the Arbitration Act, by third parties and not the owners themselves, being adjudicatory in nature and not conciliatory. Therefore, there cannot arise any question of the parties having acceded to such invalid award, by treating the same to be a mutual agreement between the parties.

37. From the pleadings in the application under Order XL Rule 1, learned counsel for the plaintiffs/appellants points out that there were serious allegations therein of the suit property being let out to third parties at huge *salami*/rent, which were not shown in the list of tenants and corresponding rents furnished by the defendants/respondents in the Trial Court. The plaintiffs annexed to the Receiver application the corresponding tenancy agreements with certain tenants which showed huge *salami* and rent being fixed by the landlords/defendants, which were not disclosed in the defendants' list, given in the application under Order VII Rule 11.

38. Moreover, even the wives of the defendants, who are not co-owners of the property by any stretch of imagination, have been inducting tenants to the property.

39. The paragraphs in the written objection to the receiver application, filed by the defendants, which dealt with the said specific allegations, did not contain any denial at all and were, at best, evasive in nature. The factum of induction of third parties at huge rents, which was not disclosed by the defendants (including by non-co-owners, being the wives of the defendants) were, thus, virtually admitted.

40. The argument of the respondents as to the purported delay of two decades, it is contended, is misplaced, since the plaintiffs were not parties to the arbitral proceeding or the award and had no knowledge of the same at the relevant point of time. As pleaded in the plaint, the cause of action for the present suit arose only when the plaintiffs came to know that the defendants' mother Chandrakala has unilaterally paid property tax for the suit property and had made attempts to have the property mutated in her name. Thus, it is contended that the learned Trial Judge ought to have allowed the Receiver application.

41. There are two broad issues which are raised by the parties:

(i) Whether the plaint should have been rejected/returned;

(ii) Whether the Receiver application ought to have been dismissed.

42. Those are dealt with as follows:

(i) <u>Whether the plaint should have been rejected/returned</u>

43. It is trite law that while deciding an application under Order VII Rule 11 of the Code, the court has to rely only on the pleadings of the plaint and the documents relied thereon. It would be going beyond the ambit of Order VII Rule 11 if the court takes into consideration materials furnished by the defendants. Such contentious issues can only be decided by evidence on trial, upon framing appropriate issues at a subsequent stage.

44. Thus, the alleged suppressions contended by the defendant/respondents are not borne out on a plain reading of the plaint itself and ideally, ought not to have been looked into at all.

45. However, since such issues have been raised, in order to rule out the suppression of germane facts, thereby filing a vexatious and harassive suit, which should be nipped in the bud, such contentions are also dealt with herein.

46. In *Sharada Sanhi (supra)*[1], the Hon'ble Supreme Court observed that once a suit is dismissed for default owing to the absence of the plaintiff but when the defendant is present, the legal consequences under Order IX Rule 8 of the Code come into operation. In such a situation, it was held, the remedy available to the plaintiff is circumscribed by Order IX Rule 9 of the Code, which expressly bars the institution of a fresh suit on the same cause of action, the only course open to the plaintiff being to seek restoration of the earlier suit by demonstrating sufficient cause for his absence on the date of dismissal.

47. In Paragraph 40 of the said judgment, the Hon'ble Supreme Court categorically recorded the facts of the case and observed that the cumulative effect of the events in such case was that the appellants therein not only permitted the original suits to be dismissed for default but also allowed the restoration application and other proceedings to meet the same fate. Such repeated non-prosecution, it was held, could not be simply brushed aside as a lack of initiative to carry proceedings forward; on the contrary, it

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[1] ***Sharada Sanhi and Others v. Asha Agarwal and Others*, reported at *2026 SCC OnLine SC 480***

manifested that the plaintiffs/appellants therein intended to steal a march over the defendants by resorting to dubious methods, deliberately avoiding direct proceedings and instead securing orders in proceedings wherein they were not parties.

48. The awareness of the appellants therein of the claim of the respondent nos. 1 to 3 in respect of the suit property was held to be clear from the very institution of the suits by the appellants.

49. Paragraph no. 42 thereafter begins with the expression “in this backdrop”, making it clear that it was in the facts of the said case that the Hon’ble Supreme Court made its observations. In Paragraph no. 43, the very first sentence begins with the expression “contextually”, further connecting to the proposition discussed therein to the facts of the said case.

50. Consequentially, in Paragraph 47 of the said report, the Hon’ble Supreme Court held that it would not be unfair to criticise the conduct of the appellants as amounting to an abuse of the process of court, having allowed the earlier challenge to the sale deeds to attain finality and thereafter seeking to reopen the same issue in execution. The Hon’ble Supreme Court, in such specific context, discussed its equitable jurisdiction in which it could not ignore such conduct where a party played fast and loose with the court, also drawing analogy from Order XXIII as well as Section 11 of the Code.

51. However, the said context is completely absent in the present case.

52. The ratio of a judgment is required to be derived in the context of the facts of the said case and cannot be divorced from the same and be construed to arise out of thin air.

53. In sharp contradistinction with the said case, in the present case, it has not even been made out that the plaintiff/appellants herein were parties to the earlier suit. Even if they were so, the trappings of Order IX Rules 8 and 9 of the Code were not applicable, since on the date when the suit was purportedly dismissed "for default", it was not merely because of the absence of the plaintiffs at the hearing but in view of the dispute having already been referred to arbitration. Section 8 of the Arbitration Act does not allow for continuance of a suit or retention of the same by the court after an order is passed by the court in the suit under Section 8 of the said Act to refer the parties to arbitration. Sub-section (1) of Section 8 of the Arbitration Act clearly provides that upon an application under Section 8 being made, the judicial authority before which such action is brought "shall refer the parties to arbitration", thus not leaving anything of the suit to be retained before the said Court. As opposed to the provisions of its predecessor-statute, that is, the Arbitration Act, 1940, the 1996 Act does not provide for any stay of the suit during the period when the matter is referred to arbitration but envisages a reference of the suit and the disputes raised therein lock, stock and barrel to the arbitrator.

54. Hence, as on the date when the suit was purportedly dismissed for default, there was no suit in the eye of the law before the court by dint of the earlier reference to arbitration and the order recording the dismissal of the suit was at best a procedural recording of the terminus of the suit by reference to arbitration. Thus, the bar under Order IX Rule 9 is not applicable in the present case at all.

55. Moreover, in a partition suit, the cause of action is a continuing one and, as such, the earlier dismissal of a similar suit would not stand in the way of a subsequent suit, as the bar under Order IX Rule 9 relates to the *same* cause of action, which would not be applicable.

56. Again, the respondents rely on the purported arbitral award dated February 9, 2002. However, the appellants, who claim to be co-owners in their independent capacity and not through their mother, were not parties to arbitral proceeding or the award. Even if their mother was, the award could at best have bound the mother and not the present appellants, who do not claim through any of the parties to the arbitral proceeding.

57. That apart, as rightly argued by the appellants, the arbitral award was never published, which is *ex facie* evident from the order of the learned Single Judge dated July 22, 2002 passed in connection with a recall application filed by the appellant's mother. In the said order, the court clearly recorded the concession of the mother of the defendants/respondents that the award could be made ready and published *if extension was granted*. Thus, it was a tacit admission that the award had not yet been published. There is nothing on record to show that it was ever published thereafter.

58. Moreover, the award was mandatorily required to be stamped under the Stamp Act but was not stamped at all. Such fact is evident from the copy of the award furnished by the defendant-respondent themselves.

59. Also, under Section 31(3) of the Arbitration Act, reasons are mandatorily to be recorded in an arbitral award, unless there is an agreement of the parties to the contrary. No such agreement has been brought forth. Thus, since the award is *ex facie* unreasoned, it was violative of Section 31(3) and is not a valid award in the eye of law at all.

60. Section 10(1) of the Arbitration Act specifically provides that the parties are free to determine the number of arbitrators, *provided that such number shall not be an even number*.

61. There are several provisions in the said Act, including Section 11, which provide for appointment of arbitrators by the court or by consent of parties. However, the overarching operation of Section 10 circumscribes the rest of the provisions of the statue. Section 11 merely provides for the appointment of an arbitrator in the event the consensual process between the parties in that regard fails – nothing more, nothing less. The said provision does not override Section 10. If that was the intention of the Legislature, there is no reason why it could not be expressed in specific language in the provision itself.

62. The appellant, in this regard, confronts us with the judgment of the Hon'ble Supreme Court in *Narayan Prasad Lohia (supra)*[2]. The Hon'ble Supreme Court, in the said report, discussed several provisions of the Arbitration Act and observed, inter alia, that if two arbitrators agree to a common award, there is no frustration of the proceedings and in such a case that common opinion would have prevailed even if the third arbitrator, presuming there

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[2] ***Narayan Prasad Lohia v. Nikunj Kumar Lohia and others*, reported at *(2002) 3 Supreme Court Cases 572***

was one, had differed and therefore, it could not be seen as to how there would be waste of time, money and expense if a party, with open eyes, agrees to go to arbitration by two persons and then participates in the proceedings.

63. However, it has to be borne in mind that the said findings were rendered in the context and the circumstances of the case. In the very next paragraph where the above proposition was recorded, that is, Paragraph No. 18 of the said judgment, it was observed that the grounds of challenge to an arbitral award (under Section 34 of the Arbitration Act) are very limited and an award can only be set aside if the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties. In such context, it was held that if the composition was in accordance with the agreement of the parties, as in the said case, there can be no challenge under the said provision.

64. However, in the present case, we are not dealing with any challenge under Section 34 of the Arbitration Act, the scope of which is extremely limited. Thus, the proposition laid down in the said judgment is not squarely applicable to the present case.

65. Be that as it may, even without conclusively dwelling upon such issue, the award was otherwise not valid in the eye of law, as discussed above. Thus, the said award, not being a valid award in the eye of law, could not have operated as *res judicata.*

66. One cannot lose sight of the fact that the present appellants, who claim to be co-owners of the suit property independently and not through the parties to the arbitral proceedings, are not bound by the said award, hence precluding the operation of the doctrine of *res judicata* altogether.

67. As regards the suit being undervalued, the said finding of the learned Trial Judge was solely based on the e-assessment slip furnished by the defendants, which was obviously obtained at their behest and on the unilateral portrayal of the suit property by the defendants before the registering authority. Noticeably, while issuing the e-assessment slip, the suit property was characterized as "commercial" as well as "*bastu*". From the documents furnished by the defendants along with Order VII Rule 11 of the application, the rent is *ex facie* meagre and the property is otherwise residential. Apart from there being not a whisper throughout the plaint as to the property being commercial in nature, even the averments in the application under Order VII Rule 11 of the Code filed by the defendants do not clearly disclose that the property is commercial in nature. Thus, valuation of the suit property was *ex facie* incorrect, being based on false impression being given by the defendants themselves. The learned Trial Judge, thus, committed a perversity in relying solely on the said valuation to come to the conclusion that the suit was undervalued.

68. Secondly, even if the court was of the opinion that the suit was undervalued, it was the incumbent duty of the Trial Court to undertake an inquiry within the contemplation of Section 11 of the Court Fees Act. Section 12 of the said Act further provides that for the purpose of such inquiry, the court may depute or issue a Commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the court.

Such report and any evidence recorded by such person shall be treated as evidence in the inquiry.

69. Section 13 of the Court Fees Act envisages that the court, when making an enquiry under Section 12, shall have, for such purpose, the powers vested in a court under the Code of Civil Procedure in respect of enforcing attendance of any person and examining him on oath or affirmation, compelling the production of documents or material objections and issuing Commission for examination of witnesses.

70. Section 16(2) of the Court Fees Act provides that the determination of valuation for such purpose by the Trial Court would be final but whenever any such suit comes before a Court of Appeal, reference or revision, if such court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable if the question was rightly decided. Section 18 provides that if an appeal or plaint which has been rejected by the "lower Court" on any of the grounds mentioned in the Code is ordered to be received or if a suit is remanded in appeal on any of the grounds mentioned in Order XLI Rule 23 of the Code for a second decision by the "lower court", the appellate court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee payable on the memorandum of appeal. Section 19 envisages the refund of fee on application for review of judgment, and Section 20 provides for refund where the court reverses or modifies its formal decision on the ground of mistake.

71. Thus, between themselves, Sections 11 to 20 of the Court Fees Act provides a complete ecosystem of adjudication, on inquiry and/or investigation, of the question of undervaluation if the court is of the opinion that the suit is undervalued, and a detailed procedure therefor as well as a system of refund in certain cases has been laid down.

72. In the absence of any such inquiry or investigation, if the court holds the suit outright to be undervalued, the plaintiff loses the opportunity statutorily given to it to contest or participate in the hearing in respect of valuation or to put forth its version on the same.

73. The entire paradigm of such enquiry was given a go-by by the learned Trial Judge in the present case, placing reliance solely on an e-assessment slip which was produced by the defendants in connection with an application for rejection of plaint, thereby travelling beyond the jurisdiction of the court under Order VII Rule 11 of the Code. Thus, such finding itself is perverse and unlawful.

74. Even otherwise, Section 7(viii) of the Court Fees Act was misinterpreted and erroneously applied in the present case. The said provision is attracted only if separate possession of a share of a joint family property is claimed and *if the plaintiff has been excluded from possession of the property of which he claims to be a coparcener or co-owner*. Thus, the clear mandate of the statute is that only if the plaintiff is categorically shown to be excluded/ousted from the entire joint property will the said provision be attracted. It was premature for the learned Trial Judge even to decide on the question of ouster (which it did not, in any event). From the plaint case, it is only revealed that the plaintiffs' physical possession is restricted to two rooms and a portion of the suit premises and not the entire property, thus precluding the operation of Clause (viii) of Section 7 of the Court Fees Act. Moreover, even if the said provision was to be applicable, the valuation would be the market value of the plaintiffs' share and the plaintiffs' share alone and not the valuation of the entire property. Proceeding on such premise, the court had to undertake a proper evaluation of the share of the plaintiffs whereas it relied on the erroneous valuation of the entire property as projected by the defendants.

75. As Section 7 (viii) of the Court Fees Act is, at least *prima facie*, not attracted in the present case, the suit was to be valued as per the usual court fees payable for a partition suit on the basis of the plaint averments. Thus, it cannot be said that the suit was undervalued.

76. Thus, the learned Trial Judge erred in law as well as in fact in arriving at the conclusion that the suit was undervalued and returning the plaint on such count.

77. In *Mustafa Shah (supra)*[3], a learned Single Judge of this court had rightly observed that the standard to go by in respect of valuation of a suit is the value of the reliefs sought in the suit and not the value of the subject-matter of the suit. Applying the said standard in the present case, the plaintiff sought for partition (principal relief) and other consequential reliefs. Thus, in the absence of any pleading of ouster, the fixed court fees for partition suits paid by the plaintiffs and the valuation of the plaint were justified.

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[3] ***Mustafa Shah v. Dhanu Shah*, reported at *1966 SCC OnLine Cal 118***

(ii) <u>Whether the Receiver application ought to have been dismissed</u>

78. The appellants are justified in arguing that the learned Trial Judge acted without jurisdiction in deciding the Receiver application prior to deciding the question of jurisdiction. If, in the perception of the learned Trial Court, it did not have jurisdiction to entertain the suit, the Court could not have adjudicated at all on any of the interlocutory application at all.

79. Secondly, on merits, we do not find any suppression of material facts by the plaintiffs. Even in the application for rejection of plaint, the defendants admitted that the plaintiffs did not comply with the so-called arbitral award, thus, ruling out any mutual settlement regarding partition of the property in terms of the award. Since, in any event, we have held above that the previous award was invalid in the eye of law and that the principle of *res judicata* and/or bar under Order IX Rule 9 of the Code are not applicable, there was no question of suppression of any material fact and/or any bar of law.

80. Even otherwise, in Paragraph Nos. 21 to 29 of the application under Order XL Rule 1 of the Code, the plaintiffs/appellants categorically alleged on oath that the defendants have been letting out portions of the suit property indiscriminately in favour of third parties and that even the spouses of the defendants, who are not claimed to be co-owners even by the defendants, have been inducting tenants. It was further alleged that huge *salami* and rent is being taken in respect of such inductions of tenants, which are found to be completely suppressed in the list of tenants and corresponding rents disclosed in the application filed by the defendants under Order VII Rule 11 of the Code.

81. It was further alleged in the Receiver application that the defendants are unilaterally administering, wasting, eroding, destroying and alienating the property in favour of third parties by back-dated deeds, thus making out a strong case for appointment of receiver for the limited purpose of receiving rents and usufructs of the suit property and maintaining accounts.

82. The categorical allegations in Paragraph Nos. 21 to 29 of the Receiver application were dealt with in the written objection filed by the defendants thereto, in particular, in Paragraph Nos. 13, 14 and 59 of the same. However, we do not find any denial to the aforesaid allegations in the said paragraphs of the written objection. The denials, if any, were evasive in nature and did not categorically controvert the serious allegations as narrated above. Thus, even on the premise of oath versus oath, the allegations made in the Receiver application were sufficiently substantiated in order to make out a case for appointment of Receiver under Order XL Rule 1 of the Code.

83. Although wider prayers were made in the Receiver Application, the Court can always mould the relief and grant a lesser remedy by appointing a receiver only for the purpose of collecting rent and maintaining accounts as well as maintaining and preserving the suit property.

84. The ground of delay in filing the suit and the application, as urged by the respondents, is also flimsy since, as per the plaint, the cause of action of the present suit arose only upon the plaintiffs coming to know that the defendants' mother Chandrakala was unilaterally asserting ownership rights in the suit property by paying property tax and having her name mutated in respect of the said property in the municipal records.

85. Since the plaintiffs/appellants were not parties to the earlier arbitral proceeding or award, there is no scope of attributing any knowledge in that regard to the plaintiffs. Even otherwise, we would be traversing entirely beyond the plaint and the documents referred to therein if we undertake a conclusive enquiry on such question at this premature stage.

86. Thus, the learned Trial Judge erred in law and in fact in dismissing the Receiver application as well.

CONCLUSION

87. In view of the above findings, the impugned order cannot be sustained.

88. Accordingly, F.M.A. No. 712 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 47 dated March 10, 2025 passed by the learned Judge, Twelfth Bench, City Civil Court at Calcutta in Title Suit No. 268 of 2023, and restoring the suit to its original file and number before the learned Trial Judge.

89. Any action, if taken pursuant to the impugned order, for return of the plaint and presenting the same before any other forum, stands hereby reversed.

90. The learned Trial Judge shall now proceed to hear the suit on merits by trial on evidence, upon framing appropriate issues as and when raised. While doing so, the learned Trial Judge shall not be unnecessarily influenced by any of the above observations, which are tentative in nature, arrived at for the limited purpose of deciding the present appeal.

91. The application filed by the plaintiffs/appellants under Order XL Rule 1, read with Section 151 of the Code of Civil Procedure is hereby partially allowed, thereby directing the learned Trial Judge to appoint a Receiver for the purpose of collecting rents and other usufructs of the property and shall also maintain the suit property from the income received therefrom. The Receiver shall maintain accounts in respect of the income and expenditure in respect of the suit property and shall furnish the same at regular intervals, as fixed by the learned Trial Court, before the said court. The initial remuneration of the Receiver, as assessed by the learned Trial Judge, shall be borne by the plaintiffs/appellants. Further remuneration of the Receiver, also to be assessed by the learned Trial Judge from time to time if it so deems appropriate, keeping in view the nature of work of the Receiver, shall be deducted from the income from the suit property and shall be incorporated in the accounts. If necessary, the Receiver will be at liberty to approach the Trial Court for orders in the event substantive decisions in respect of management of the property is required to be taken.

92. The above exercise of appointing the Receiver and fixing his/her remuneration shall be completed by the learned Trial Judge within a fortnight from the communication of this order to the Trial Court.

93. CAN 1 of 2025 is consequentially disposed of as well.

94. There will be no order as to costs.

95. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)

Later

After the above judgment is passed, learned counsel appearing for the respondent no. 1 seeks stay of operation of the same.

Keeping in view the nature of the judgment, we grant stay of operation of the above judgment for a period of thirty days from date.

(Sandip Kumar De, J.) **(Sabyasachi Bhattacharyya, J.)**