**FIRST APPEAL BEFORE DISTRICT JUDGE**

IN THE COURT OF THE LD DISTRICT JUDGE

AT ALIPORE

CIVIL APPELLATE JURISDICTION

REGULAR FIRST APPEAL

TITLE APPEAL NO……………………………….

APPEAL ARISING OUT OF THE IMPUGNED  ORDER  DATED 5.2.2018 PASSE IN THE TITLE SUIT NO 976 OF 2017 BY THE LD 1ST CIVIL JUDGE [JR DIV]

IN RE :

 MADHUSUDAN DASGUPTA

s/o Haripada Dasgupta

Santi Nagar, Sapui Para , PS Balli

Dist: Howrah

                                       ………..Appellant

VS

RANJAN  SAHA

s/o  Murendar Ch Saha ,

5 Sree Ram Dhag Road  , PS :  Baliguange , Dist 24 Parganas

                                         …….Respondent

VALUE OF THE APPEAL RS  200/-

MEMO OF APPEAL ON BEHALF OF THE APPELLANT FOR REGULAR FIRST APPEAL

Being aggrieved and dissatisfied with the Order under Order 7 rule 11 of the Civil Code dated 9.2.2018 passed in the above Title suit by the Ld 1st Civil Judge [Jr Div] in  Madhusadan Dasgupta vs Ranjan Saha, the appellant above named begs to prefer this Memo of Appeal on the following amongst other:-

G R O U N D S

1. For the impugned Order of the Trial Court are against the settled principle of law, Evidence and probabilities of the case.

2. For the Ld Court below has been pleased to dismiss the suit by the way of rejection of plaint on the contrary Ld Court ought to have decreed the suit.

3. For the Ld Court below has failed to appreciate the scope, extent and propriety of the suit in its proper perspective.

4. For the Ld Court below has failed to appreciate the status of the parties in their proper perspectives.

5. For the Ld court below has failed to appreciate the factum of fraud as a cause of action for bringing the Title Suit.

6. For the Ld trial Court did not apply its Judicial mind at the time of passing the impugned Order for rejecting the Plaint under appeal.

7. For the Ld Court below has failed to appreciate the legal connotation of certain interpretations such as :

Superior Court / higher forum

Cause of action and continuous/running cause of action

Fraud as an ingredient of the cause of action

Constructive Res-Judicata as not applicable in the Impugned Title Suit

‘Substratum’ of a  Suit and Playing Fraud with the Substratum  of a Suit

Equity relief

8. For the Ld Court below has erred in law and in fact in dismissing the suit on the rejection of plaint under Order 7 Rule 11 of the Civil Code  while holding the following proposition of Law :

“ No Law authorized this court to set aside the Judgment of decree passed by any higher forum “ —–[ A Civil Court of Seniour Division is not higher forum and above a civil court of junior Division, is my humble submission].

Section 34 of the Specific Relief Act has no application for setting aside a Judgment and Decree passed by any court ….[On the ground of fraud any judgment can be challenged and declared to be set aside by an independent declaratory suit is my submission ]

All issues as preliminary issues in a Suit for the specific performance of the contract  in T.S no 25 /2007 “ were involved”  in the dismissed Suit ….[ The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at the stage of  an Order 7 rule 11 application is the ratio in  Kamala and Ors  vs  T Eshwara Sa and Ors (2008) 12 SCC 661, as relied by the appellant and mis-applied by the trial judge as partially appreciated , is my humble submission]

The suit is barred by Constructive Res judicata …[ Order 7  R 11(d) , the ratio in  Kamala and Ors vs K.T Eshwara Sa and Ors (2008) 12 SCC 661 goes against the impugned proposition  held by the Ld Trial judge, is my submission]

9. For that, the impugned Order under appeal is mis-conceived , speculative and non application of law and mind, and result of cursive non- heartful reading of the Plaint and relief as prayed thereby.

10. For that, the impugned order under this appeal is otherwise bad and cannot be sustained in law

And

Therefore, the Suit under this appeal shall be restored and decided against the Respondent after setting aside the impugned Order passed in 5.2.2018 in T.S No 976 of 2017.

Certifying that the grounds taken above are good grounds for admitting this appeal

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DATE:-

Drafted and settled by

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PARTICULARS OF THE SUIT

VALUE OF THE SUIT Rs 200/-

COURT FES PAID RS. 200/-

VALUE OF THE APPEAL Rs 200/-

COURT FEES PAID  FOR APPEALR Rs

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List of Documents

Memo of Appeal

Certified copy of the Impugned Order

Vakalatnama