

**03/09
2026**

**AD/343/18
266312
NANDY**

(DO)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**RVW/84/2022
CAN/1/2022**

**CEMIN CONSULTANTS PRIVATE LIMITED & ORS.
VS
THE INDUSTRIES LIMITED & ORS.**

Mr. Pranit Bag, Advocate
Ms. Sanjukta Roy, Advocate
Ms. Rituparna Chatterjee, Advocate
Mr. Amani Kayan, Advocate
Ms. Sadia Sultana, Advocate

.....for the Petitioners/Applicants

Mr. Shuvasish Sen Gupta, Advocate
Mr. Sarosij Dasgupta, Advocate
Mr. Balarko Sen, Advocate
Ms. Subhra Das, Advocate

.....for the Opposite Parties

CAN/1/2022

1. This is an application for review of the judgment and order dated 22.02.2022 passed in CO/45/2022.
2. CO/45/2022 was filed challenging an order transferring the title suit from the commercial to the non-commercial division. The suit had initially been filed before the Court of learned Civil Judge (Senior Division) bearing Title Suit No. 770 of 2009. After consideration, the learned Judge had transferred the said suit to the commercial division, causing the said suit to be renumbered as Title Suit No. 39 of 2019.
3. Even while the application under Article 227 of the Constitution of India had been filed challenging such transfer, the issue of maintainability of the revisional application had been raised by the respondents, *inter alia*, that the order transferring the suit from one division to the other was essentially one under Order 7 Rule 10 of the Code

of Civil Procedure, 1908. This being an appealable order, a revision would not lie.

4. The petitioner urged that this being a commercial suit, the provisions of Order 7 Rule 10 and consequences thereof would not be applicable to a suit of this nature, being guided strictly by the Commercial Courts Act, 2015.
5. The petitioner had argued at length on the issue of maintainability of this application under Article 227 of the Constitution of India, which was answered in no uncertain terms by the respondent.
6. However, the order of which review is sought proceeded to deal with the matter on merits as well as the point of maintainability.
7. Mr. Bagh, learned Advocate appearing for the petitioners, submits that the grievance of the petitioners is not so much on the issue of the sustainability of the order on merits, but on the issue that the parties, and particularly the petitioners, were deprived of an opportunity of placing the merits of the case, if the same had to be decided on merits, which it was while disposing of the revisional application by the order of 22.02.2022.
8. Mr. Sengupta, learned Advocate, appearing for the respondents, submits that the order does indeed proceed on not just the issue of maintainability, but on a rather well-settled principle of law that an appeal is maintainable against an order which is to be assailed under Order 7 Rule 10 for return of the plaint.
9. However, he has, in his usual fairness, admitted that

parties had not addressed the matter on merits and the order of 22.02.2022, is one on merits as well as on the issue of maintainability.

10. Without getting into the question of whether the review petition is maintainable or not, ostensibly since the same does not fall within the limited determination of this Court at this juncture, the only issue which is to be decided is whether the parties were given an opportunity to address the Court on merits, since the matter has not been decided on the issue of maintainability alone, but also on merits.
11. Since both Advocates who had represented the parties at that point of time are *ad idem* that submission on merits had not been made, it would be beneficial to afford an opportunity to the parties to make submissions on merits.
12. In view of the aforesaid stand taken by both learned Counsel appearing for the parties, the order dated 22.02.2022, is recalled.
13. The applications being **RVW/84/2022** and **CAN/1/2022** are accordingly **disposed of**.
14. The parties will be at liberty to approach the Bench having determination to take up matters under Article 227 of the Constitution of India.
15. Needless to mention that in this review application, this Court has not been called upon to decide the matter on merits or even as to the maintainability of the application under Article 227 of the Constitution of India.

(Reetobroto Kumar Mitra, J.)

