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SK
Ct. No. 18
11.01.2021

**C.O. No. 3443 of 2014
CAN 1 of 2017 (Old No. : CAN 8603 of 2017)
(Via Video Conference)**

**Yogendra Prasad Podar
Vs.
Abdul Aziz Mir & Ors.**

Mr. Suprabhat Bhattacharya ... For the petitioner.

Mrs. Sarmistha Ghosh Sharma
... For the opposite parties.

Re : CAN 1 of 2017 (Old No. : CAN 8603 of 2017)

This is an application for restoration of the revisional application dismissed for default on March 24, 2017.

Perused the application.

Sufficient grounds have been shown by which the petitioner was prevented from appearing before the Court when the matter was called on for hearing.

The order dated March 24, 2017 is therefore recalled.

C.O. 3443 of 2014 is restored to its original file and number.

CAN 1 of 2017 (Old No. : CAN 8603 of 2017) is allowed.

No order as to costs.

Re : C.O. 3443 of 2014

The revisional application is taken up for hearing.

The defendant in a suit for eviction is the petitioner of the present application under Article 227 of the Constitution of India.

The suit for eviction was initially filed in the 3rd Court of learned Civil Judge, (Junior Division), Diamond Harbour, District 24 Parganas (South) being Title Suit No. 155 of 1976, subsequently the said suit was re-numbered as Title Suit No. 61 of 2001.

The said suit was sent to the Court of the learned Civil Judge, (Junior Division), Kakdwip, District 24 Parganas (South) for final disposal. The suit after transfer has been re-numbered as Title Suit No. 121 of 2009.

The plaintiffs/opposite parties in the said suit prayed for dispensing with the service of summons of the said suit upon non-contesting defendants. The prayer of the plaintiffs was allowed by the learned trial Judge. However, this Court set aside the said order in revision being C.O. 919 of 2012 with a direction upon the plaintiffs to serve summons upon all the defendants of the said suit.

The plaintiffs took step for service of such summons but summons sent to one of the defendants being defendant No. 1(Ja), namely Sanjoy Poddar returned un-served with the endorsement 'death'.

The plaintiffs to ascertain the names of the heirs and legal representatives of the said deceased

defendant resorted to the provision of Order XI Rule 2 of the Code of Civil Procedure to deliver interrogatories to the defendant no. 1(ka), a relative of the said deceased defendant.

The learned trial Judge by the order impugned being Order No. 346 dated July 1, 2014 allowed the said prayer of the plaintiffs and directed the petitioner to give reply as per the contents of the petition for interrogatories.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioner submits that his client is not aware of the names and particulars of the heirs and legal representatives of the deceased defendant No. 1 (Ja), as such unable to respond to the interrogatories so supplied to him.

Mrs. Sarmistha Ghosh Sharma, learned advocate appearing on behalf of the opposite parties responding to the said argument of Mr. Bhattacharya categorically submits that the client of Mr. Bhattacharya is the close family relation of the deceased defendant, as such it will not be difficult for him to supply the interrogatories sought for.

Having heard the learned counsel for the parties and on going through the materials on record it appears that the defendant No. 1 (ka), the petitioner herein is expressing his inability to supply the details

of the heirs and legal representatives of the deceased defendant.

It appears from the submission of the learned counsel for the parties that neither the deceased defendant no. 1 (Ja) nor his predecessor-in-interest ever appeared in the said suit to contest, therefore, to obviate difficulty that the plaintiffs are facing in substituting the heirs and legal representatives of the said deceased defendant, it is open for the plaintiffs to resort to the provision of Order XXII Rule 4(4) of the Code to pray before the learned Trial Judge for exemption from the necessity of substituting the heirs and legal representatives of the deceased defendant no. 1(Ja) in the suit.

If such an application is filed by the plaintiffs/opposite parties herein the learned Trial Judge shall decide the same in accordance with law.

The revisional application is disposed of with the above observations.

No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)