

14.12.2020
(S/L-22)
Ct.-18
(Susanta)

C.O. 2629 of 2017
With
IA NO: CAN 1/2018 (Old No. CAN 5972 of 2018)
And
IA NO: CAN 2/2018 (Old No. CAN 9287 of 2018)
And
IA NO: CAN 3/2018 (Old No. CAN 9289 of 2018)

Mr. BabuLal Arya & Anr.
-Vs-
Mrs. Shashi Arya

Mr. Tarique Quasimuddin.
Ms. Sanchita Chaudhury,
..... For the petitioners.

Mr. Subhankar Nag,
Mr. Pradip Sancheti,
..... For the Opposite Party.

In Re: Can 2/2018 (Old No. CAN 9287 of 2018) and IA NO: CAN 3/2018 (Old No. CAN 9289 of 2018)

The revisional application was dismissed for default on September 19, 2018. CAN 3/2018 (Old No. CAN 9289 of 2018) is an application for restoration of the revisional application by recalling the said order.

CAN 2/2018 (Old No. CAN 9287 of 2018) is an application for condonation of delay in filing the said restoration application.

Perused the applications. Delay in filing the application for restoration has been satisfactorily explained and sufficient grounds have been made out in the application for restoration whereby the

petitioners were prevented from appearing before the Court when the matter was called on for hearing.

Order dated September 19, 2018 is therefore recalled. C.O 2629 of 2017 is restored to its original file and number.

IA NO: CAN 2/2018 (Old No. CAN 9287 of 2018) and IA NO: CAN 3/2018 (Old No. CAN 9289 of 2018) are allowed.

Ref: IA NO: CAN 1/2018 (Old No. CAN 5972 of 2018)

The petitioner no. 2 died intestate during the pendency of the revisional application on May 10, 2018. This is an application for substitution of the heirs and legal representatives of the said deceased petitioner No. 2.

Perused the application. The application is within time and it is in form, hence allowed.

Let the heirs and legal representatives of the deceased petitioner no. 2, whose particulars have been set out in paragraph 5 of the application be brought on record as petitioners.

The department is directed to carry out the necessary amendment in the Cause Title of the revisional application.

IA NO: CAN 1/2018 (Old No. CAN 5972 of 2018) is allowed.

There shall be no order as to costs.

Ms. Sanchita Chaudhury, Junior to Mr. Tarique Quasimuddin appears on behalf of the heirs and

legal representatives of the deceased petitioner no. 2. She has already filed Power on behalf of the said substituted petitioners.

In Re: CO 2629 of 2017

The revisional application is taken up hearing. The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for Ejectment being Ejectment Suit No. 104 of 2013 pending before the 3rd Additional Court of Learned Civil Judge (Junior Division), Alipore, 24-Parganas (south).

The learned Trial Judge by the order impugned being order dated April 7, 2017 has dismissed an application filed by the petitioners for holding local investigation of the suit property on the ground that an Advocate Commissioner was appointed at the instance of the petitioners on earlier occasion and the report of the said inspection is already on record.

The petitioners are seeking eviction of the opposite party from the suit property alledging *inter alia* violation of the Clauses (m),(o) and (p) of Section 108 of the Transfer of Property Act, 1882.

The petitioner to bring home his said ground of eviction is seeking local investigation of the suit property.

The scope of inspection and the scope of investigation are completely different. If investigation of the suit property is necessary for the effective adjudication of the *lis*, prayer for such investigation

cannot be thrown overboard only on the ground that there was an earlier inspection of the suit property and the report of the said inspection is on record.

The order impugned is, therefore, set aside. The learned Trial Judge is directed to decide the application filed by the petitioners for local investigation afresh in accordance with law.

Keeping in view of the nature of the suit the learned Trial Judge is requested to make all endeavour to dispose of the said application expeditiously preferably within a period of four weeks from the date of communication of this Order.

To adhere to the time limit fixed by this order for disposal of the said application the learned trial Judge shall not entertain the prayer of the parties for any unnecessary adjournment.

C.O 2629 of 2017 is thus allowed.

There shall be 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.)