

5\_8  
25.9.2023  
SB

CPAN 1578 of 2006  
In  
C.O. 1916 of 2002  
CAN 1 of 2002  
CAN 3 of 2005 (not in file)  
CAN 6 of 2008 (not in file)  
CAN 7 of 2011  
CAN 8 of 2012  
CAN 9 of 2012 (not in file)  
CAN 10 of 2013 (not in file)  
CAN 11 of 2013 (not in file)  
CAN 12 of 2017 (not in file)  
CAN 13 of 2021 (not in file)  
CAN 14 of 2021 (not in file)

Susanta Shikari  
Vs.  
Pramurta Kalyan Majumdar  
with  
CPAN 736 of 2012  
CAN 1 of 2021

Susanta Shikari  
Vs.  
Gouri Mondal  
with  
CPAN 737 of 2012  
CAN 1 of 2021

Susanta Shikari  
Vs.  
Pramurta Kalyan Majumdar & Ors.

Mr. Rabindranath Mahato,  
Mr. Animesh Das,  
Mr. Aritro Sankar Ray                      ...for the petitioners

Mr. Abhishek Sikdar                      ... for O.P. No. 1

1. Heard Mr. Mahato, learned counsel for the petitioner and Mr. Avishek Sikdar, learned counsel representing the opposite party no. 1.
2. This revisional application was dismissed for default on 20.08.2019 and the petition for restoration was filed on 07.09.2021. According to Mr. Mahato while exercising the jurisdiction of Article 227 of the Constitution of India, the

limitation for restoration application is to be governed under Article 137 of the Limitation Act and not under Article 122 of the Limitation Act. According to Mr. Mahato, an application under Article 227 of the Constitution of India, is concerned with exercise of revisional jurisdiction but this is not an application for revision *per se*.

3. Refuting such contention, Mr. Sikdar Submits that Article 122 of the Limitation Act unambiguously clear that an application for restoration of a revisional application should be filed within 30 days from the date of dismissal.
4. According to Mr. Sikdar, this application though is under Article 227 of the Constitution of India, it is a revisional application, therefore, the prescribed period of limitation should be 30 days and this application should be rejected being barred by limitation.
5. Mr. Mahato places his reliance on the decision in ***Nur Nehar Bewa vs. Rabindra Nath Deb*** reported in ***AIR 1988 Calcutta 358***. Mr. Sikdar has also been placed reliance on the same judgment.
6. On perusal of the said decision, I find that Hon'ble Special Bench while answering the issue held that restoration petition of an application for restoration of suit under Order IX Rules 4, 9 or 13 of Civil Procedure Code is dismissed for default, would be governed under Article 137. But according to Mr. Sikdar, this present application is not for restoration of an application filed for restoration of the proceeding.
7. This is an application for restoration of the revisional application. Therefore, this judgment cannot be of any help to the petitioners. The provision of Section 115 of Code of Civil

Procedure and provision under Article 227 of Constitution of India are not identical. While considering the application under Article 227 of the Constitution of India the Court exercises the Superintending jurisdiction and with a limited scope to consider whether the learned Court below committed any jurisdictional error or there is any perversity in the order. But in deciding a petition under Section 115 of the Code of Civil Procedure, the Court is obliged to see if there is any material illegality or irregularity in passing the order.

8. Moreover, there is no specific period of limitation prescribed under the Limitation Act with reference to any application under Article 227 of the Constitution of India.
9. Since there is no whisper under Article 122 prescribing the period of limitation for restoration of an application under Article 227 of the Constitution of India, I am of the view that it should be looked into in the light of Article 137 instead of Article 122 of the Limitation Act, therefore, I am inclined to allow the application.
10. Let this revisional application be restored to its original file and number.
11. The application being **CAN 14 of 2023** is disposed of.

In Re : CAN 13 of 2021

12. This is an application for substitution upon the death of Susanta Shikari, the petitioner no. 1 who died intestate on 01.7.2021 leaving behind him surviving Smt. Purnima Shikari, the widow and Triparna Shikari, a minor daughter represented by her natural guardian and mother. They may be substituted as petitioner no. 1(a) and 1 (b). Petitioner no. 1 (b) is being represented by her mother petitioner no. 1 (a).

13. Department is directed to amend the cause title accordingly.
14. Since the original file is not available with the record, the copy of the same supplied by Mr. Mahato is taken on record.
15. The application being **CAN 3 of 2021** is disposed of.

In Re : C.O. 1916 of 2002

16. This application under Article 227 of the Constitution of India impeaches the judgement passed in Misc. Appeal No. 142 of 2000 by 13<sup>th</sup> Court of Additional District Judge, 24 Parganas (South) on 17.8.2001 affirming thereby the order of injunction passed by learned Trial Court in T.S. No. 49 of 1999, restraining thereby the defendants from interfering with the peaceful possession of the plaintiffs.
17. Briefly stated, the plaintiffs are claiming title over the property by purchase from some of the co-owners.
18. The defendants are claiming possessory title asserting their possession for forty six years over the suit property. The R.S. Record of right *prima facie* demonstrates that the possession of part of the property is with the defendant. It is rightly submitted by Mr. Sikdar that this is a pure question of title which is required to be adjudicated by thorough trial.
19. Mr. Mahato is also in agreement with Mr. Sikdar that the suit is pending since 1999 and witness action has not yet started.
20. Under such circumstances, I am inclined to dispose of the application with the direction upon the parties to maintain *status quo* as to their possession, nature and character of the property in suit as on date.

21. This revisional application is thus disposed of along with all connected applications.
22. Learned Trial Court is requested to take necessary step to ensure the constitutional right of the litigant to have speedy justice. In doing so, learned Trial Court is now directed not to grant adjournment in the breach of Order XVII of Code of Civil Procedure which limits three adjournments for a party in a proceeding. It should be followed in letter and spirit.
23. Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)