

23.09.2020
Item No.17
(Susanta)

(Via Video Conference)

**C.O. 1215 of 2020
with
IA No. CAN 1 of 2020**

**Sri Chitta Ranjan Ghosh
Vs.
Nitya Gopal Ghosh**

Mr. Kushal Chatterjee,
Ms. Debbrata Roy.

... for the petitioner.

Mr. Souri Ghoshal.

... for the opposite party.

The defendant in a suit for declaration is the petitioner of the present revisional application under Article 227 of the Constitution of India and is directed against order no. 8 dated 7th February, 2020 passed by the 3rd Court of Learned Civil Judge (Senior Division), Barasat, 24-Parganas (North) in Title Suit No. 1088 of 2018 whereby the learned Trial Judge has dismissed an application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure holding that the suit is not barred under Section 34 of the Specific Relief Act, 1963 as alleged by the defendant in his application under Order VII rule 11 of the Code.

The learned Trial Judge in the order impugned has held that whether or not the instant suit will proceed as per Section 34 of the Specific Relief Act

is a matter of trial and same is a mixed question of law and facts.

I do not find any illegality and/or infirmity in such finding of the learned Trial Judge, the order impugned does not call for any interference.

C.O. 1215 of 2020 is dismissed.

The connected application being IA. No. CAN 1 of 2020 is accordingly disposed of.

There shall be no order as to costs.

The learned Trial Judge is requested to expedite the hearing of the suit.

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

(Biswajit Basu, J.)