

17.11.2020

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**C.O. 1267 of 2020
(Via Video Conference)**

**Gautam Kundu
Vs.
Gopal Kundu & Ors.**

Mr. Siddhartha Lahiri
Mr. Subhashish Saha
... For petitioner.

Mr. Swapan Kumar Mazumder
... For opposite party nos. 5 & 6.

Petitioner has come with challenge against order dated 19th February, 2020 passed by Court of learned Civil Judge (Junior Division), Nabadwip in Misc. Appeal no. 1 of 2017 (Sri Gopal Kundu and ors. vs. The Board of Councillors, Nabadwip Municipality and ors.).

Mr. Lahiri, learned advocate appears on behalf of petitioner and draws attention to impugned order. He submits, it will appear from the face of it that the appeal was allowed, not on merits, but simply because lower appellate court found that appellants were not heard in the making of demolition order. He submits further, appellants were present on joint inspection but deliberately stayed away from hearing. Mr. Mazumder, learned advocate appears on behalf of the Municipality and submits, the order was duly passed.

Other opposite parties, appellants in the Court below, go unrepresented. Affidavit of service discloses all opposite parties were served by Speed Post. Opposite parties nos. 5

and 6 (Municipality), have appeared. Court presumes service on other opposite parties.

There is substance in contention of petitioner that the appeal was not allowed on merits. If what weighed with lower appellate Court, was appellants having a good contention on merit, it ought to have been decided in allowing the appeal. Impugned order does not speak of a decision on merits. Hence, it is not an order in appeal, which reverses the decree on merits. As such, impugned order is liable to be and is set aside. Lower appellate Court will decide the appeal afresh.

The revisional application is allowed as above.

(Arindam Sinha, J.)