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04.08.2021
TN

CO No.69 of 2020

Kishan Kumar Lohia and others
Vs.
M/s I.T.C. Ltd., and others

Mr. Subhashis Ghosh

.... for the petitioners

Affidavit-of-service filed in court today be kept on record.

However, despite service, none appears for the opposite parties.

The petitioners have made out a strong *prima facie* case that the trial court refused to exercise jurisdiction vested in it by law in rejecting the application of the petitioners, filed in the form of a 'no objection' for withdrawing their names from the suit. It appears from the pleadings and submissions of learned counsel for the petitioners that the suit had originally been filed by co-owners, but due to subsequent grant of a probate of a will, the parties who seek their own withdrawal from the suit, did not get any interest in the property, necessitating their withdrawal from the suit since the said plaintiffs

would be redundant parties to the suit. The trial court, apparently, without considering the facts rejected such application on the ground that no reasons were furnished.

Accordingly, CO No.69 of 2020 is allowed by setting aside Order No.80 dated December 4, 2019 passed by the Seventh Bench, City Civil Court at Calcutta in Title Suit No.718 of 2000 and directing the trial court to re-adjudicate the application of the petitioners for withdrawal of their names as plaintiffs upon adverting to the relevant facts of the case. Such re-hearing and disposal of the application for withdrawal shall be completed within three weeks from the date of communication of this order to the court below.

The parties as well as the court below shall act on the written communication of learned advocate for the petitioners accompanied by a server copy of this order without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)