

KRISHNA KANTA ROY VS. NIHAR RANJAN ROY & ORS.

Ms. Joyita Roy
..for the petitioner
Mr. Basudeb Gayan
..for the opposite parties

This revisional application is directed against an order dated January 1, 2020 passed by the learned Civil Judge, Senior Division, Burdwan in Title Suit No. 179 of 2017. The defendant no.3 is the petitioner before this Court.

By the order impugned, the learned Court below rejected the application for taking off the matter from the framing of issues board and for allowing the application for acceptance of the written statement filed by the petitioner. The said application was filed on December 19, 2019. The learned Court below rejected the application of the defendant no.3 on the ground that in case of delay in filing the written statement the onus was upon the defendant to plead and demonstrate valid reasons for not having filed the written statement on time. The Court did not find any reason to allow the defendant no.3 to file the written statement.

The learned Advocate for the petitioner submits that the suit was proceeding ex-parte to the prejudice of the petitioner. The petitioner could not

participate in the proceedings and contest the suit due to serious illness as he is suffering from cancer.

There is, yet, another development in the matter, inasmuch as, the preliminary decree in the partition suit has been passed on December 24, 2020. The petitioner has not yet prayed for setting aside of the said preliminary decree which was passed *ex parte* against the defendant nos.1-4. The petitioner is the defendant No.3.

There can be more than one preliminary decree but until the preliminary decree is set aside, the written statement cannot be accepted. The petitioner is at liberty to take appropriate steps with regard to the preliminary decree that was passed in the partition suit on December 24, 2020 in accordance with law. If at any stage the preliminary decree is set aside the petitioner will be at liberty to renew her prayer for acceptance of the written statement in accordance with law. The learned court below shall proceed independently without being influenced by this order.

This revisional application is disposed of.

The order impugned is modified to the above extent.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

