

55 03.02.2021

Ct-12

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**FMAT 192 of 2020
with
I.A No. CAN 1 of 2021**

**Sri Niranjana Chowbey
Vs.
Sri Asim Kumar Chatterjee & Ors.**

Mr. M.P Gupta
Mr. Dilip Kumar Saila
... For the Appellant

The Misc. Case was dismissed on 1st November, 2019 after recording that the appellant prayed for adjournment on 9th August, 2018, 1st September, 2018, 13th September, 2018, 20th September, 2018, 30th July, 2019, 27th August, 2019 and even on 1st November, 2019. The Misc. Case was filed under Order 9 Rule 9 of C.P.C for restoration of Title Appeal No. 40 of 2017.

Apart from the fact that the application should be filed under Order 41 Rule 19 of the Code of Civil Procedure it appears that the appellant has deliberately not chosen to proceed with the appeal. The decree for eviction cannot be executed because of the pendency of the appeal and also the application for restoration.

It is apparent from the order under appeal that there is culpable negligence on the part of the appellant to proceed with the Misc. Case. The discretion exercised by the trial court being not found to be unjustified and arbitrary, we are not inclined to interfere with the order passed by the learned District Judge, Birbhum.

The appeal and application are accordingly dismissed without any order as to costs.

(Saugata Bhattacharyya,J.) (Soumen Sen, J.)