

**PROVAT KUMAR MITRA VS. ARATI
AGARWAL & ORS.**

Mr. Domongo Gomes
Mr. Soumitra Datta
..for the petitioner

Mr. Joy Saha
Mr. Rajdeep Bhattacharya
Mr. D. Mitra
..for the opposite party no.2
Mr. Deepan Kr. Sarkar
Ms. Roopa Seth Mitra
..for the opposite party no.4

This revisional application has been filed challenging an order dated January 28, 2021 passed by the learned Civil Judge, Senior Division, Sealdah in Title Suit No. 4 of 2006.

The petitioner is aggrieved because the learned Court below allowed the defendant no.2 to file a second written statement when there was already another written statement on record. It appears that the learned Court below failed to look into the records while granting such liberty to the defendant Nos. 2 and 4 to file their respective written statement. It appears that the said written statement of the defendant No. 2 was filed in the year 2008. Thereafter, due to destruction of the records, a direction was passed by this Court to restore of the records with further directions to dispose of the suit

within a limited period. Suddenly, by the order impugned, the learned Court below once given directed service of the plaint and documents upon the defendants along with a direction upon the defendant no.2 to file written statement. The order suffers from error apparent on the face of record and cannot be sustained.

With regard to submissions made on behalf of the defendant no.2 that the written statement lacked pleadings which were necessary for proper adjudication of the disputes between the parties, it is my opinion that there were other avenues open to the said defendant under the Code of Civil Procedure but a fresh written statement cannot be allowed to be filed by ignoring the one already on record.

It is contended by the defendant no.2 that the copy of the plaint has not been received and the written statement was filed on the basis of the injunction application. However, once the revisional application has been served on the defendant no.2, which contains the copy of plaint and documents, no further service of the plaint and the documents relied upon in the plaint is required. In any event, the written statement filed was at the choice and peril of the defendant No. 2, but the same cannot be a reason to allow another written statement to be filed. The provisions of law should have been resorted to.

The order impugned is quashed and set aside.

Keeping in mind the age of the suit, it is expected that the learned Court below shall dispose of the suit within a period of one year from the date of communication of this order.

This revisional application is disposed of.

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.)