

Sn 16.3.21

C.O.513 of 2021

**RANI PRABHA DAS & ORS. VS. THE BOARD
OF WAKF & ORS.**

Mr. Debasish Roy
Ms. Sumitra Das
..for the petitioners
Sk. Md. Galib
..for the Board of Auguf
Ms. Nilofar Siddique Alam
..for the defendant no.4

Heard learned Advocate for the parties.

The petitioners are aggrieved by an order dated January 28, 2021 passed by the learned Wakf Tribunal in Misc.(judl) Case No. 01 of 2020 arising out of Suit No.29 of 2012.

It is the contention of the petitioners that on the particular date due to the death of the husband of one of the petitioners, the petitioners could not appear before the learned Tribunal and the suit was dismissed for non-prosecution on February 10, 2020. An application for restoration of the suit was filed under the provision of Order 9 Rule 4 of the Code of Civil Procedure. By the order impugned, the said application was rejected with costs of Rs.10,000/- to be paid to the learned Advocate for the defendants. From the order impugned it appears that the conduct of the petitioners were not

satisfactory and they tried to delay the proceedings. It is also recorded that the petitioners failed to take any steps on earlier occasions and as such the learned Tribunal did not restore the suit.

Mr. Roy, learned Advocate for the petitioners submits that the learned Tribunal should have restricted the consideration to the reasons as to why the petitioners could not be present before the learned Tribunal on the date when the suit was dismissed for non-prosecution.

Mr. Galib, learned Advocate for the Board submits that the suit has lingered on the board of Tribunal for a long time and the property was a very valuable one and due to the pendency of the suit, the estate was suffering.

I have considered the contentions of the respective parties. In my opinion, the reasons assigned by the petitioners for not being able to attend the Court on the date when the suit was dismissed for non-prosecution that is, death of the husband of one of the petitioners, is a cogent ground and as such the order impugned is quashed and set aside. Moreover dismissal of a suit for non-prosecution has a very different connotation altogether, that is, the plaintiffs/petitioners were not at all interested to pursue the suit whereas, non appearance of a party would at best lead to an order of dismissal of the suit for default.

The suit no. 29 of 2012 is restored to its original file and number. The costs to be paid by the petitioners to the opposite parties, as directed by the learned Tribunal shall be reduced to Rs. 1,000/- each to be paid to the Mutwali and the Chief Executive Officer of the Board.

It is made clear that the petitioners should not take any unnecessary adjournments and the suit should be disposed of within a period of six months from the date of communication of this order.

The time limit fixed hereinabove is peremptory.

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.)