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Ct. 18
08.12.2021

C.O. No. 1361 of 2019
CAN 1 of 2019 (Old No : CAN 10839 of 2019) (Not in file)
(Via Video Conference)

Guru Prasad Sen & Anr.
Vs.
Bhaslia Netaji Jubak Sangha, represented by
Sukdeb Dey

Mr. Sourav Sen,
Mr. Partha Chakraborty,
Ms. Disha Shukla. ... For the petitioners.

Affidavit-of-service filed on behalf of the petitioners
in Court today be kept with the record.

None appears on behalf of the opposite party either
virtually or physically on call.

The defendants in a suit for declaration are the
petitioners of the present application under Article
227 of the Constitution of India, which is directed
against the Order No. 18 dated March 12, 2019
passed by the 1st Court of learned Civil Judge(Junior
Division) at Barasat, District – 24 Parganas (North) in
the said suit being Title Suit No. 223 of 2015.

The plaintiff/opposite party has filed the connected
suit in the representative capacity. In the plaint, the
plaintiff has pleaded regarding requirement of
obtaining leave under Order I Rule 8 of the Code of
Civil Procedure but no specific prayer is made to the
said effect.

However, at the preemptory hearing stage, the
plaintiff filed an application under Order I Rule 8 of

the Code praying the required leave to maintain the said suit. The learned Trial Judge by the order impugned has allowed the said application.

The defect in filing a suit in the representative capacity without obtaining the leave as required under Order I Rule 8 of the Code is a curable defect, as such, the order impugned does not call for any interference.

C.O. 1361 of 2019 is disposed of with a request to the learned Trial Judge to expedite the disposal of the said suit in accordance with law and in doing so shall not grant any unnecessary adjournment to either of the parties.

In view of the disposal of the main application, the application for extension of interim order being CAN 1 of 2019 (Old No: CAN 10839 of 2019) (Not in file) has become infructuous and is accordingly dismissed.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)