

19.05.2021
SL No.2
Court No.28
(gc)

**FMAT 355 of 2021
With
CAN 1 of 2021**

**The Zonal Manager, WBSEDCL
Vs.
Sri Subodh Kumar Samanta**

(Via Video Conference)

Mr. Jaydip Kar, Sr. Adv.,
Mr. Puspall Chakraborty,
...for the Appellant.

Mr. Tanoy Chakraborty,
...for the Respondent.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appeal is arising out of an order dated 4th March, 2021 in a suit for eviction. After the completion of evidence, the plaintiff appears to have filed the application for documents by the defendant. We have been informed that no introductory was served and denial of documents may not have taken place. It is submitted on behalf of the appellant that no notice under Section 66 of the Evidence Act has been served upon the plaintiff.

Be that as it may, the defendant has already filed its affidavit of documents and the document on which much hue and cry has been raised by the plaintiff appears to be an admitted document and in view of the fact that there is no denial as to the existence of the said document, there could not be any reason for not marking the said document

as an exhibit and proceed with the trial. Moreover, it appears that the Trial Court has exercised its power under Order 11 Rule 21(1) of the Code of Civil Procedure which appears to be non-existent on the date of the order.

The Photostat copy of the said document dated 16th July, 1980 shall be marked as an exhibit by consent of the parties.

The learned Counsel for the parties have categorically stated before us that existence and the contents of the said document are not in dispute.

In view thereof, the impugned order is set aside.

The Trial Court is requested to proceed with the trial and conclude the same as expeditiously as possible.

The learned Counsel for the parties have assured this Court that they would cooperate in early disposal of the suit.

With the aforesaid observation the appeal and the connected application stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Suvra Ghosh, J.)

(Soumen Sen, J.)