

29.08.22
Sl-05
Ct.32
(S.R.)

**FA 129 of 2017
with
IA No. CAN 2 of 2021**

**Sri Sukumar Jaiswal
v.
Sri Rakesh Kumar Jaiswal & Ors.**

Mr. Raghunath Das ... for the appellant.

Mr. Kaushik Dey ... for the respondent nos.1 & 2.

Affidavit of service filed by the appellant be kept on record.

In re: IA No. CAN 2 of 2021

The present application being CAN 2 of 2021 has been filed for recalling of the order dated 2nd December, 2021 by which the aforesaid appeal was dismissed for default.

We have heard Mr. Das, learned advocate appearing in support of the application and Mr. Dey, learned advocate appearing for the plaintiffs/respondent nos.1 and 2.

We are satisfied with the explanation provided by the appellant as regards non-appearance of his learned advocate on 2nd December, 2021.

Accordingly, we recall the order dated 2nd December, 2021.

The interim order passed on 21st September, 2017 is reinstated and the same shall continue till the disposal

of the appeal.

Records would reveal that by an order dated 21st September, 2017 the Lower Court Records had been called for and the appellant was directed to file paper books.

We find that the paper books have till date not been filed.

Records would reveal that consequent upon dismissal of the appeal as aforesaid by an office order dated 18th December, 2021 the Lower Court Records have been sent down.

Since we have recalled the order dated 2nd December, 2021, let the Lower Court Records be called for by special messenger. Costs for such special messenger be deposited by the appellant within two weeks from date. The department is directed to intimate the advocates for the parties immediately upon arrival of the Lower Court Records. The appellant shall prepare requisite number of paper books as directed by the order dated 21st September, 2017 within four weeks from the date of service of notice of the arrival of the Lower Court Records.

Accordingly, the application being CAN 2 of 2021 stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)