

15.03.2021
Sl. No. 1
srm

C.O. No. 3257 of 2017

**Pralay Mazumdar
Vs.
Pradip Mazumdar & Ors.**

Mrs. Sima Adhikari,
Mr. Abhijit Ghosh

...for the Petitioner.

Mr. Rajdeep Bhattacharya,
Ms. Sevanti Roy

...for the Opposite Parties.

This revisional application arises out of an order dated August 25, 2017 passed by the learned Civil Judge (Junior Division), 2nd Court, Barasat, District-24 Parganas (North) in Title Suit No.291 of 2015. By the order impugned, the learned Court below rejected an application filed by the petitioner/plaintiff praying for stay of operation of Title Suit No.291 of 2015 or in the alternative that the said suit be directed to be heard analogously with Title Suit No.1024 of 2016.

Initially, the petitioner as the plaintiff filed Title Suit No.291 of 2015 for certain reliefs. Thereafter, the said suit was withdrawn with liberty to file afresh. The defendants had already entered appearance in the said suit and filed their written statements along with a counterclaim. Written statement to the counterclaim was also filed by the petitioner.

Thereafter, the petitioners prayed for withdrawal of the suit with liberty to file afresh. Such liberty was granted and Title Suit No.1024 of 2016 was filed.

It is the contention of the petitioner that as the parties, reliefs claimed and the matters in dispute are similar in nature, Title Suit No.291 of 2015 should be stayed till the disposal of the Title Suit No.1024 of 2014 or in the alternative both the suits should be heard analogously. The learned Court below rejected the application. Hence the revisional application was filed.

Having considered the impugned order and the contentions of the respective parties, I am of the view that when the parties are the same, the subject matter of the dispute is also the same but, just because the reliefs claimed may not be exactly the same in both the suits, analogous hearing cannot be denied.

Under such circumstances, counterclaim in Title Suit No.291 of 2015 to be heard analogously with Title Suit No.1024 of 2016. It appears that Title Suit No.291 of 2015 is at the stage of framing of issues and Title Suit No.1024 of 2016 is at the stage of SR and AD. The defendants have appeared before this Court and it can be safely recorded that they have notice of the

suit and summons have been received along with the copy of the plaint.

It is submitted by the learned Advocate for the petitioner that an application for transposition has to be filed in the learned Court below but the same could not be filed in view of the orders passed in this revisional application.

Liberty is granted to the petitioner to file such application within a week from date upon serving a copy to the defendants. The learned Court below shall consider and dispose of the same within a week thereafter. The opposite parties/defendants will file their written statement in Title Suit No.1024 of 2016 within a month from date. Thereafter both the suits should be heard analogously and the issues should be framed together.

The parties are at liberty to apply before the learned Court below along with a server copy of this order for fixing the dates, in order to ensure implementation of this order.

The revisional application is, thus, disposed of.

In view of the disposal of the revisional application, the connected applications have become infructuous and those are disposed of accordingly.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)