

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CO 100 of 2019

**Babul Sutradhar
Vs.
Sankar Sutradhar and others**

Mr. Bikramaditya Ghosh,
Mr. Deborshi Dhar

...for the petitioner

Mr. Arijit Ghosh,
Mrs. Swarnali Ghosh (Sengupta)

.... for the opposite parties

When the matter is called on for hearing, it is submitted by learned counsel appearing for the proforma opposite parties that the principal opposite party, being opposite party no.1, has died in the meantime. However, in view of the legal heirs of the opposite party no.1, that is, the proforma opposite parties, being already on record in the revisional application, the learned advocate-on-record for the petitioner is granted leave to strike out the name of the opposite party no.1 from the cause title of the revisional application and to make necessary amendments to the cause title to delete the expression "Proforma" as the prefix to Opposite Parties, used in respect of the opposite party nos.2 to 4, during the course of the day.

At the juncture when both the parties were heard and the court expressed its opinion and was about to deliver judgment, learned counsel for the opposite parties seeks an adjournment. Such practice is deprecated, since after knowing the prospective fate of the matter, such a prayer for adjournment is in bad taste and is, thus, refused.

Learned counsel for the petitioner submits that the father of the petitioner had taken out an application for maintenance and cancellation of a gift deed executed by the father in favour of the petitioner, which proceeding was disposed of on June 3, 2015. By the said order, the Sub-Divisional Magistrate, Alipurduar had granted maintenance to the father (since deceased) but had specifically recorded that there was no sufficient ground for cancellation of deed and such prayer for cancellation of deed was rejected on merits.

Thereafter, the father filed another application, according to learned counsel for the petitioner at the behest of the proforma opposite parties, who are the other sons, for similar reliefs. There was an additional allegation that the maintenance amount as directed earlier was not being paid by the present petitioner.

Learned counsel for the petitioner further submits that the petitioner was never served any copy of the second application but by practising fraud, an

appearance was recorded on behalf of the petitioner as well. By placing reliance on the relevant document, as annexed to the writ petition, particularly at page 33, it is contended that neither the petitioner nor any of the other parties herein signed the alleged service copy. Thus, it is submitted that the order was obtained by fraud.

Learned counsel for the opposite parties submits that the petitioner had not complied with the previous order, as such, making the petitioner liable to clear arrear maintenance in favour of their father.

However, in view of the demise of the father, the cause of action for non-payment of arrear maintenance does not subsist, since maintenance is a personal relief.

That apart, there is sufficient proof on record as regards the non-service of the second application by the father on the present petitioner.

Even if all the above issues were to be given a go-bye, the order impugned in the present revisional application is patently barred by the principle of *res judicata*, since by the previous order dated June 3, 2015 passed in Petition No.249 of 2015, the Sub-Divisional Magistrate, Alipurduar had categorically refused such relief of cancellation of deed to the father (since deceased) on merits.

In view of the above discussions, the impugned order cannot survive judicial scrutiny.

Accordingly, CO 100 of 2019 is allowed, thereby setting aside the order dated August 31, 2016 passed by the Sub-Divisional Officer, Alipurduar and Chairperson, Alipurduar Maintenance Tribunal, Alipurduar in Petition No.7 of 2016. Any action taken in the meantime on the basis of the impugned order shall also be deemed to stand cancelled/negated.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)