

04.05.2022  
SL No.18  
Court No.8  
(gc)

**FMA 1011 of 2019  
With  
CAN 1 of 2019  
(Old No: CAN 392 of 2019)**

**Arabinda Kumar Marik & Ors.  
Vs.  
Smt. Arati Ghosh (Prafulla Kr. Ghosh  
Since Deceased) & Ors.**

Ms. Shebatee Datta,  
...for the Appellants.  
Mr. Bhagbat Chaudhuri,  
Mr. Biswajit Ghosh,  
...for the Respondents.

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

The Appellate Court cannot dismiss the appeal on merit in view of the Order 41 Rule 17(1) of the Code of Civil Procedure. The Coordinate Bench on 28<sup>th</sup> August, 2019 also expressed similar view at the time of admission of the appeal.

Under such circumstances, the judgment impugned dated 4<sup>th</sup> September, 2018 is set aside. Misc. Case No.25 of 2013 is restored.

We request the learned Additional District Judge, 1<sup>st</sup> Court, Howrah to dispose of Misc. Case No.25 of 2013 on merits after giving opportunity of hearing to the parties as expeditiously as possible preferably within a period of three months from the date of communication

of this order without granting any adjournment to either of the parties unless it is avoidable and subject to the convenience of the learned Court. We make it clear that in the event either of the parties fail to appear, the Misc. Case may be decided in absence of the other party.

Accordingly, the appeal being FMA 1011 of 2019 and the application being CAN 1 of 2019 (Old No: CAN 392 of 2019) stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Sugato Majumdar, J.)**

**(Soumen Sen, J.)**