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Ct. 18
12.05.2022

C.O. No. 579 of 2019
I.A. No : CAN 1 of 2022

Smt. Vaswati Sarkar & Anr.
Vs.
Sri Dilip Kumar Banerjee & Ors.

Mr. S. K. Dutt,
Mr. Satrajit Sinha Roy ... For the petitioners.

Mr. Sumit Kumar Ray,
Mr. Munshi Ashiq Elahi ... For the opposite parties.

Re : I.A. No : CAN 1 of 2022

This is an application for recalling of the order dated February 08, 2022 whereby the revisional application was dismissed for default.

The application has been filed out of time by 56 days. Perused the application, it appears that the said delay has been satisfactorily explained as such condoned.

It further appears that the petitioners were prevented by sufficient cause from appearing before the Court when the matter was called on for hearing.

The order dated February 08, 2022 is therefore recalled, C.O. 579 of 2019 is restored to its original file and number.

I.A. No. CAN 1 of 2022 is allowed without any order as to costs.

Re : C.O. 579 of 2019

The revisional application under Article 227 of the Constitution of India is at the instance of the tenants/defendants in a suit for ejectment which is directed against the order dated October 05, 2018 passed by the 5th Court of learned Civil Judge, (Junior Division) at

Alipore, District – 24 Parganas (South) in the said suit being Ejectment Suit No. 56 of 2017.

The petitioners in the suit filed an application praying permission to repair the suit property. The learned Trial Judge by the order impugned has dismissed the said application holding that for the said purpose the rent controller is required to be approached.

The power and jurisdiction to deal with the matters under chapter IX of the West Bengal Premises Tenancy Act, 1997 although vest with the rent controller but as soon as an ejectment suit is filed before a competent Civil Court the said Court assumes the said jurisdiction and power.

Dismissal of the said application on the said ground is therefore erroneous as such the order impugned is set aside.

The learned Trial Judge is requested to decide the said application for repair afresh. It is however made clear that this Court has not gone into the merit of the said application, it is for the learned Trial Judge to decide the same in accordance with law.

C.O. 579 of 2019 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)