

02.05.2022

**Court No.21
Item No. SL
01**

R.V.W. 53 OF 2020

IN

C.O. 1412 of 2021

with

IA No. CAN 1 of 2022

Mohan Prasad Meharia

Vs.

Twilight Properties Pvt. Ltd. & Ors.

Mr. Sabyasachi Chowdhury,

Mr. Arjun Mookerjee,

Ms. Paramita Banerjee,

...for the Review Appellant

Ms. Fereshte Sethna,

Mr. Satadeep Bhattacharyya,

Mr. Surajit Biswas,

Ms. A. Khan

...for the Opposite Party nos. 1 & 2

Mr. Sakabda Roy,

Mr. Rohit Mukherji

...for the Opposite Nos. 6 to 11

The present Review application is at the instance of one of the defendants and opposite parties in C.O.1412of 2021 arising out Title Suit No.10216 of 2011 and in respect of order

passed by this Court in C.O. No. 1412 of 2021 on 08.02.2022 whereby the impugned order passed by Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 10216 of 2011 on 20.03.2021 was set aside and allowed the application under Order 11 Rule 14 CPC filed by the plaintiff in the Court below, which the Court below had kept in abeyance.

It has been contended there is apparent error on the order passed by this Court while disposing C.O. No. 1412 of 2021 under Article 227 of the Constitution on 08,02,2022 as it has allowed the application of the plaintiffs under 11 rule 14 CPC, without giving the defendants an opportunity to file written objection and without permitting them to place their argument over the maintainability of such application filed by the plaintiff.

Further, it has been contended the application under Order 11 Rule 14 CPC filed by the plaintiff was not disposed of by the learned Court below, rather had kept the same at abeyance vide impugned order and had recast the issues. If the order under review is allowed to remain then there will be miscarriage of justice.

On the other hand learned Advocate for the plaintiffs/present opposite party nos. 1 & 2 submits the order passed by this court does not suffer from any wrong and error and prays for rejection of Review Application.

From order dated 21.02.2022 passed by this Court, it appears the plaintiffs of Title Suit No.10216 of 2011 being aggrieved by the order of recasting of issues before disposal of

their application under 11 rule 14 CPC by the learned Court below on 20.03.2021 has preferred the Revision.

After extensive hearing both sides, this Court held the learned Court below has committed error/illegality by keeping the petition under Order 11 Rule 14 of CPC filed by the plaintiffs in abeyance with uncertainty and for recasting the issues, which it could have done after disposal of the petition under Order 11 Rule 14 of CPC filed by the plaintiffs.

However, due to inadvertence this Court instead of directing the lower Court to dispose of the application Order 11 Rule 14 of CPC has allowed the application and which indeed need to be disposed of in merit after giving an opportunity to the defendants to file written objection and opportunity of being heard. Thus, this court is of view, if the order dated 08.02.2022 passed by it in C.O. No. 1412 of 2021 is permitted to remain, then it would prejudice the interest of the present petitioner one of the defendants or that of other defendants of T.S.10216 of 2011. Therefore, the Review Application is hereby allowed.

The second paragraph of internal page no. 9 of judgement dated 08.02.2022 passed in C.O. No. 1412 of 2021 by this court will read as follows *“It is settled principle of law that issues can be framed at any stage of the suit and even at the time of writing of judgement additional issue can be framed or issue can be recast. Therefore, in view of the discussion made above this Court holds the Court below has committed error in*

keeping the application of the plaintiffs under Order 11 Rule 14 of CPC in abeyance with uncertainty. The order impugned is hereby set aside. The learned Court below is hereby directed to dispose of the application under Order 11 Rule 14 of CPC filed by the plaintiff after giving an opportunity to the defendants to file written objection and disposed of the same after hearing both sides and as per law.”

The other parts of the Judgement dated 08.02.2022 passed by this court in C.O. No.1412 shall remain as it is except the above mentioned paragraph in internal page no.9 of the Judgement. Let this order do form a part of the Judgement dated 08.02.2022.

The Review Application no. 53 of 2022 and CAN 1 of 2022 are disposed of.

There will be no order as to cost.

All parties are directed to act on server copy of this order duly downloaded from the official website of this court.

Urgent xerox certified copies of this order, if applied, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)

