

09.06.2022
Item No.05
Court No.18
AJ.

C.O. 933 of 2018

Md. Hafizuddin & Anr.

-Vs-

Md. Haider Ali & Anr.

Mr. Debdutta Basu,
Mr. Snehansu Majumder.
....for the petitioners.

Affidavit of service filed on behalf of the
petitioners be kept with the record.

None appears on behalf of the opposite parties
in spite of service of notice.

The revisional application under Article 227 of
the Constitution of India is at the instance of the
defendants in a suit for declaration of title and
injunction are the petitioners of the present
application and is directed against Order No. 16, dated
December 18, 2017 passed by the learned Civil Judge
(Junior Division), Siliguri, District-Darjeeling in the
said suit being Title Suit No. 221 of 2015.

The defendants, in the suit filed an application
under Order XIV Rule 2 of the Code of Civil Procedure
for framing a preliminary issue regarding the
maintainability of it and relied on some documents in
the said application.

The plaintiffs by filing an application under
Order XI Rule 12 of the Code prayed for discovery of
the documents referred to in the said application
under Order XIV Rule 2 of the Code.

The learned Trial Judge allowed the said application thereby directed the defendants to file the said documents.

The learned Trial Judge by the order impugned has struck out the defence of the defendants in the suit and fixed it for ex parte hearing for the failure of the defendants to file one of the documents so directed to be filed.

The application under Order XIV Rule 2 of the Code was not pressed by the defendants prior to the order impugned being passed, as such, non-compliance with the said order of discovery cannot entail the consequence of striking out the defence of the defendants. The order impugned, therefore, is not sustainable, and is accordingly set aside.

C.O. 933 of 2018 is allowed 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.)