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C.O. 979 of 2022

**Sreemay Basu
Vs
Smt. Malati Roy & Ors**

Mr. Shuvasish Sengupta,
Mr. Ankit Roy, ... For the petitioner.

The subject matter of challenge in this revisional application is against the order dated 3rd March, 2022, passed by learned Civil Judge (Junior Division), 3rd Court, Alipore, in Title Suit No. 1062 of 2017 rejecting the application under Section 151 of the Code of Civil Procedure praying for repairing of the suit property.

Admittedly, in a suit for declaration of tenancy right, petitioner has already been favoured with ad interim order of injunction. The order granting ad interim order of injunction has already been carried in appeal.

The Lower Court Records, according to learned advocate for the petitioner, have been called for in this appeal.

It is at this stage, there was a necessity to obtain an order for repairing in aid of an application under Section 151 of the Code of Civil Procedure, and the same upon filing before the Trial Court was rejected by the impugned order.

The reason assigned by the Court below is that in absence of the original record, the prayer for repairing cannot be considered, and accordingly it was rejected.

Surprisingly, the prayer for rejection of repairing under Section 151 of the Code of Civil Procedure was made in the order sheets of the Court, when the original case records have already been transmitted in connection with the decision of misc appeal.

Presumably, such order was recorded by the Court below upon opening a skeleton record.

That being the position, the prayer for repairing may be addressed to by the Court below after considering the documents, to be produced either of the parties to this case, even in the absence of the Lower Court Records.

Learned advocate for the petitioner is candid enough to submit that the petitioner/plaintiff will produce all necessary documents connected with the proposed repairing, upon supplying a copy of the same to the other side and, further will ensure all sorts of co-operation in the disposal of the petition for repairing, pending arrival of the Lower Court Records from the appellant Court.

In view of the nature of the order proposed to be made in the case, no prior notice is considered to be

necessary.

Service upon the opposite parties is thus dispensed with.

The impugned order dated 3rd March, 2022 passed by learned Civil Judge (Junior Division), 3rd Court, Alipore, in Title Suit No. 1062 of 2017 is set aside.

Accordingly, learned Civil Judge (Junior Division), 3rd Court, Alipore, in Title Suit No. 1062 of 2017 is directed to ensure hearing afresh of the application for repairing under Section 151 of the CPC in the skeleton record, already maintained by the Court below, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, the Court below may consider the documents to be produced not only by the petitioner, but also by the opposite parties, and upon considering the documents, the prayer for repairing may be disposed of in accordance with the provisions of the law.

Learned advocate for the petitioner is accordingly directed to produce all necessary documents before the Court below, and ensure all sorts of co-operations in the matter of disposal of the proposed prayer for repairing.

Petitioner is directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)