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**C.O. 1587 of 2022
With
CAN 1 of 2022**

**J.P. Bohra & Co. Pvt. Ltd
Vs
Mira Roy & Anr**

Mr. Anirban Das, ... For the petitioner.

Mr. Partha Pratim Roy,
Mr. Ranmoy Mukherjee,
Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das,
... For the opposite parties.

The subject matter of challenge in this revisional application is against the rejection of a prayer under Section 151 of the Code of Civil Procedure praying for restoration of suit upon setting aside the order, dated 1st August, 2019, rejecting the plaint.

Mr. Anirban Das, learned advocate appearing for the petitioner submits that the Court below being oblivious of its own order No. 4 dated 16th February, 2016, accepting deposition of balance Court fees, proceeded to reject the prayer of the plaint improperly on the ground of non deposition of deficit Court fees.

Learned advocate for the petitioner further submits that on 20th January, 2016, petitioner/plaintiff took adjournment to file deficit Court fees, and it was allowed by the Court below,

and on the adjourned date, the petitioner/plaintiff deposited the balance Court fees of Rs. 50,000/-, which could not be appreciated by the Court below while making rejection of the plaint.

Mr. Partha Pratim Roy being assisted with Mr. Tanmoy Mukherjee, learned advocate appearing for the opposite parties disputes with the maintainability of the instant revisional application, alleging that when there is a specific provision for preferring an appeal under Order 43 Rule 1 read with Section 96 of the CPC against the rejection of plaint for whatever reasons, the instant revisional application is not maintainable.

It is thus contended by Mr. Roy that without preferring the appeal, so as to challenge the rejection of the plaint, by order no. 19 dated 1st August, 2019, there can not be any consideration for restoration of the suit taking aid of Section 151 of the CPC.

In reply, learned advocate appearing for the petitioner submits that though 151 application was filed, but it should have been considered as a review application. The position of law is very clear that there will be an appeal against the rejection of the plaint for whatever may be the grounds. Apparently the petitioner has already deposited deficit Court fees of Rs. 50,000/- on 16th February, 2016 on the adjourned date granted by the Court below. But

when the proposition of law is settled for of preferring an appeal against rejection of plaint, the same should not be attempted to be disturbed in the way, as the petitioner chooses to do.

The revisional application is thus disposed of giving liberty to petitioner to take recourse to the provisions of law as available under the Code of Civil Procedure. All points are thus left open for decision.

This order is passed without prejudice to the rights and contentions of the 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)