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C.O. 1725 of 2022

**Sri Bighan Shaw
Vs
Soumyadip Majumder**

Mr. Avik Datta,
Mr. Uttam Banerjee,
Mr. Arunesh Pathak ... For the petitioner.

Mr. Dyutiman Banerjee,
... For the opposite party.

Liberty is given to correct the cause title and the prayer portion of the instant revisional application.

Petitioner assails order dated 18th May, 2022 dismissing the revisional application being CR Case No. 29 of 2019, by learned District Judge, South 24 Parganas, Alipore.

Admittedly, order dated 4th September, 2019 passed by the Trial Court in T.S. No. 2157 of 2010 declining to accept the written statement, for non delivery of service of copy of the written statement to the plaintiff was challenged in revision before the learned District Judge, South 24 Parganas, Alipore in CR Case No. 29 of 2019.

Learned advocate appearing for the petitioner submits that the Trial Court giving a hyper-technical approach has declined to accept the written statement, merely for non-service of copy of the written statement to the plaintiff.

Per contra learned advocate appearing for opposite party petitioner supporting the order of the Court below passed in revision, submits that the impugned order not being revisable, learned District Judge, while exercising revisional authority as per provisions available under Section 115A C.P.C has rightly rejected the revision.

Upon perusal of the order dated 4th September, 2019 passed in Title Suit No. 2157 of 2017 of Civil Judge (Junior Division) 2nd Court, Alipore, it appears that written statement was filed on 14th November, 2010. Significantly, the petitioner/defendant did not comply with the direction of the Trial Court to supply copy of the written statement upon the opposite party/plaintiff on as many as two occasions.

When written statement has been submitted, it is however, conspicuous to reveal that petitioner/defendant has demonstrated his intention at least to contest the pending suit, upon setting up his defence, as disclosed in the written statement.

The copy of the written statement, ought to have been served upon the opposite party/plaintiff, while filing the written statement before the Court below. That exercise has not been done. But, at the same time, when the intention of the defendant is discernable from very filing of written statement to contest the suit, the technicality, as adhered by the

Trial Court, should not be given precedence.

The revisional application is disposed of directing the Court below to consider the written statement, as regards its acceptance giving a hearing for the purpose, without resorting to hyper-technical approach, as discussed in the body of this judgment.

Petitioner is directed to make communication of this order to the learned court below.

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)