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sandip
Ct. 18
01.03.2022

**C.O. No. 2884 of 2019
(Via Video Conference)**

**Jiban Dey
Vs.
Sagunananda Rudra**

Mr. Malay Bhattacharya ... For the petitioner.

Affidavit-of-service filed in Court today be kept with the record.

In spite of service none appears on behalf of the opposite party.

The pre-emptee in a proceeding under Section 8 of the West Bengal Land Reforms Act, 1955 is the petitioner of the present application under Article 227 of the Constitution of India, which is directed against the Order No. 12, dated July 23, 2019 passed by the learned Civil Judge, (Junior Division), Bishnupur, District – Bankura in J. Misc. Case No. 16 of 2018.

The petitioner filed an application for dismissal of the said pre-emption application on the ground that the petitioner is a co-sharer by purchase in respect of the suit property, as such, the application for pre-emption to pre-empt the sale in her favour is not maintainable.

The learned Trial Judge by the order impugned has dismissed the said application.

The issue on which the petitioner sought for the dismissal of the pre-emption application shall

be an issue in the Misc. case itself, separate adjudication on the said issue is not warranted.

The order impugned, therefore, does not call for any interference.

Mr. Bhattacharyya, however questions the maintainability of the pre-emption application on the ground that the pre-emptor/opposite party since has not deposited the entire consideration amount of the sale sought to be pre-empted, the application for pre-emption is not maintainable.

In view of the decision of the Hon'ble Supreme Court in the case of ***Barasat Eye Hospital & Ors. vs. Kasutabh Mondal*** reported in **(2019) 19 Supreme Court Cases 767**, the submission of Mr. Bhattacharyya deserves consideration.

The learned Trial Judge is requested to address the said issue first before proceeding with the said Misc. case further.

C.O. 2884 of 2019 is disposed of with the above observation 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.)