

11.04.2022
(D/L-22)
Ct.-18
(Susanta)

C.O. 3134 of 2019

Sri Subrata Bhadra
-Vs-
Sri Swapan Kumar Bhadra & Ors.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,
.... For the Petitioner.

Mr. Kushal Chatterjee,
Mr. Abir Lal Chakraborty,
.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for partition and is directed against the order no. 30 dated June 17, 2019 passed by the 1st Court of learned Civil Judge (Senior Division), District 24-Parganas (North) at Barasat in the said suit being Title Suit No. 733 of 2012.

The defendant nos. 1, 3 & 4 on September 4, 2017 filed their joint written statement but it was filed beyond the prescribed period of limitation, as such, accompanied with an application for acceptance of it.

The defendant nos. 3 & 4 subsequently changed their stand and segregated themselves from the defendant no. 1. The said defendant nos. 3 & 4 thereafter on February 21, 2018 filed

another joint written statement along with an application for acceptance of the said written statement.

The defendant nos. 3 & 4 on February 12, 2019 appeared before the learned Trial Judge and expressed their desire not to press their earlier application dated September 4, 2017 for acceptance of the written statement filed by them along with defendant no. 1.

The learned trial Judge by the order no. 27 dated February 12, 2019 allowed the said prayer of the said defendants and as a consequence thereof, the said application dated September 4, 2017 was dismissed as not pressed but by the order impugned being order no. 30 dated June 17, 2019 has allowed the said dismissed application thereby accepted the joint written statement filed by defendant nos. 1, 3 and 4.

Mr. Partha Pratim Roy, learned advocate for the petitioner submits that the learned Trial Judge by the order impugned has not only allowed a dismissed application but also allowed it on a date fixed for clarification on the law points in respect of the application dated February 21, 2018 filed by the defendant nos. 3 and 4 for acceptance of their subsequent joint written statement.

Mr. Kushal Chatterjee, learned advocate for the defendant no. 1 submits that the application dated September 4, 2017 since was dismissed as not pressed without the consent and without the presence of defendant no. 1, he cannot be made to suffer for such act of defendant nos. 3 and 4.

Having heard the learned advocate for the parties and on perusal of the record, it appears that the learned Trial Judge by the order no. 27 dated February 12, 2019 had dismissed the application dated September 4, 2017 as not pressed although one of the applicants of the said application did not pray for such dismissal of the said application.

It further appears that the learned trial Judge by the order no. 29 dated May 28, 2021 fixed June 17, 2019 as the date for clarification on law points in respect of the application dated February 21, 2018 filed by the defendant nos. 3 and 4 but on the said date fixed, allowed the application dated September 4, 2017 filed by the defendant nos. 1, 3 and 4 for acceptance of their written statement, without noticing that vide order dated February 12, 2019, the said application had already been dismissed.

The confusion on the issue of acceptance of the written statement of the said defendant nos. 1, 3 and 4 has been caused due to the vacillating

stand of the defendant nos. 3 and 4, for which the defendant no. 1 cannot suffer.

The irregularity in the order impugned had cropped up due to the said stand of the said defendant nos. 3 and 4.

However, to remove the said irregularities, the order impugned is set aside and the learned Trial Judge is requested to reconsider the application dated February 21, 2018 in accordance with law.

It is made clear that this order will not prevent the defendant no. 1 to take all remedial measures available to him under the law for acceptance of his written statement.

C.O. 3134 of 2019 is disposed of with the above terms 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.)