

09.03.2022
Ct. 21
D/L 136
ab

C.O. 2195 of 2021

Abubakkar Sahaji & Ors.

-Vs-

Ahachhanullah Islam & Ors.

Mr. Mahamudul Hassan,

... for the petitioners

Mr. Mahamudal Hassan, learned advocate appears for the petitioners.

The learned advocate for the petitioners files affidavit of service along with postal receipts and track report showing due service upon the opposite parties.

No one appears from the side of the opposite parties.

The revisional application is taken up for hearing.

Heard the learned advocate for the petitioners.

The petitioners, being aggrieved by the order of rejection of their application filed under Order 39 Rule 4 of the Code of Civil Procedure by the Waqf Tribunal by its order dated 02.09.2021, have preferred the present revisional application.

It has been contended by the learned advocate for the petitioners that the petitioners were never served with the copy of the injunction application, save and

except the copy of the plaint. The injunction order was passed against the petitioners behind their back and during their absence.

The learned advocate appearing for the petitioners further submits that the petitioners have been served with the copy of the injunction application only after their appearance before the Tribunal. Therefore, they have filed an application under Order 39 Rule 4 of the Code of Civil Procedure for setting aside the ex parte injunction order passed against them, which the Tribunal has rejected with the observation that the defendants have been duly served but failed to appear when the injunction application was taken up for consideration.

Perused the xerox copy of the order No. 11 dated 24.03.2021 passed by the Waqf Tribunal, a portion of the said order, which runs as follows:

“The prayer of application is allowed as no objection raised by other side and as the copy of injunction application is supplied to the other side.”

The observation of the Tribunal in the order dated 24.03.2021 shows that when the injunction order was passed by the Tribunal on 12.01.2021, indeed the opposite parties were not served with the copy of the injunction application. Therefore, the observation,

which the Tribunal has made in the order impugned appears to be contradictory.

However, the matter be remanded back to the Tribunal for fresh consideration of the application filed by the defendants/petitioners under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure after giving an opportunity to the plaintiff to file written objection against the said application.

With the above observations, the revisiosnal application being **C.O. 2195 of 2021** is disposed of.

Interim order, if any, stands discharged.

Connected application, if any, also stands disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(**Kesang Doma Bhutia, J.**)