

04.08.2022
Item No.37
Court No.18
AJ.

C.O. 3289 of 2019

Biroja Bhusan Bandyopadhyay
-Vs-
Chhabi Rani Bandyopadhyay & Ors.

Mr. Uttiya Ray,
Mr. Arnab Mandal.
.....for the petitioner.

Mr. Sanjib Bandyopadhyay.
.....for the opposite party no.2.

Affidavit-of-service filed on behalf of the
petitioners be kept with the record.

Except the plaintiff/opposite party no.2, none
appears on behalf of the opposite parties.

The revisional application under Article 227 of
the Constitution of India is at the instance of the
defendant no.5 in a suit for partition and is directed
against Order No. 142 dated August 09, 2019
passed by the 1st Additional Court of the learned
Civil Judge (Senior Division), Purba Bardhaman in
the said suit being Title Suit No. 41 of 2012.

The suit was dismissed for default at a very
matured stage.

The petitioner applied for restoration of the
said suit under Section 151 of the Code of Civil
Procedure.

The learned Trial Judge by the order
impugned has dismissed the said application
holding that since there is a specific provision under
Order IX Rule 9 of the Code, Section 151 of the Code

cannot be resorted to restore a suit dismissed for default besides the provision of Order IX Rule 9 of the Code is available only to a plaintiff.

The status of all parties in a partition suit is of plaintiff as such a defendant in such a suit, in appropriate case can apply for restoration of a suit for partition dismissed for default.

However, in the present case the petitioner since is contesting the suit with a counter-claim, dismissal of the said suit has no effect on his counter-claim as such he is free to proceed with the said counter-claim irrespective of the dismissal of the said suit.

The learned Trial Judge is requested to expedite the disposal of the said counter-claim.

C.O. 3289 of 2019 is disposed of with the above observations 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.)