

15.03.2022
Item No.17
Court No.18
AJ.

C.O. 3809 of 2019

Manjura Bibi

-Vs-

Giasuddin Sha & Ors.

Mr. Lutful Haque,
Sk. Mustak Ali.
....for the petitioner.

Mr. Haque, learned advocate appearing on behalf of the petitioner files affidavit of service, which is taken on record.

None appears on behalf of the opposite parties in spite of service.

The plaintiff in a suit for declaration of title and injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against Order No. 25 dated September 11, 2019 passed by the learned Civil Judge (Junior Division), Haldia, District Purba Medinipur in the said suit being Title Suit No. 89 of 2018.

The prayer of the defendant nos. 1 & 2 for acceptance of their written statement filed beyond the prescribed period of limitation was refused by the learned Trial Judge vide order No. 9 dated September 05, 2018 and the suit was fixed for ex-parte hearing against the said defendants.

Thereafter, upon conclusion of the argument from the side of the plaintiff; April 01,

2019 was the date fixed for delivery of judgment in the said suit.

The said defendants at this stage on April 02, 2019 filed their written statement along with an application for acceptance of it and removing the suit from the *ex parte* board.

The learned Trial Judge by the order impugned has allowed the said prayer of the said defendants subject to payment of costs.

The learned Trial Judge has acted with material irregularity in exercise of his jurisdiction in allowing the said defendants in filing their written statement since the prayer of the said defendants for acceptance of written statement was earlier turned down and the order to the said effect has attained finality.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

The learned Trial Judge is directed to dispose of the suit by pronouncing judgment as it was scheduled by the order dated April 01, 2019.

C.O. 3809 of 2019 is allowed 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.)