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Ct. 18
19.04.2022

C.O. No. 4189 of 2019
Ruksana Begam
Vs.
Sri Chandan Nanda & Ors.

Mr. B. P. Mondal,
Mr. Sukanta Mondal ... For the petitioner.

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

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

The defendant no. 4 in a suit for partition is the petitioner of the present application under Article 227 of the Constitution of India, which is directed against Order No. 54 dated September 11, 2019 passed by the learned Civil Judge, (Senior Division) at Haldia, District – Purba Medinipur in the said suit being Title Suit No. 31 of 2016.

The prayer of the plaintiffs for amendment of the
plaint was allowed, consequent thereupon the
petitioner was granted liberty to file additional written
statement. The petitioner instead of filing additional
written statement filed written statement with counter
claim.

The learned Trial Judge by the order impugned has dismissed the said counter claim on the ground that such counter claim was filed without the leave of the Court.

The written statement with counter claim since has already been filed and has been taken on record, the

learned Trial Judge instead of dismissing it for not obtaining prior leave shall decide whether the petitioner is entitled to the leave to file such counter claim in terms of Order VIII Rule 6A of the Code of Civil Procedure.

The order impugned is set aside.

The learned Trial Judge is requested to decide the issue indicated above as expeditiously as possible.

C.O. 4189 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.)