

August 31, 2023
Sl. No.11
Court No.19
s.biswas

CO 131 of 2023

Smt. Ullasi Dasi and others

vs.

Nanda Kumar Mondal and others

Mr. Pratip Kumar Chatterjee

... for the petitioners

Mr. Partha Pratim Roy

... for the opposite parties

Affidavit of service filed by the petitioners is taken on record.

This is a fit case to be entertained under Article 227 of the Constitution of the India as the application under Order 22 Rule 9 of the Code of Civil Procedure was not disposed of on merits.

The alternative remedy of appeal under Order 43 Rule 1 (K) of the Code of Civil Procedure would not be a bar. The learned court below proceeded on the interpretation of Rule 776) of the Civil Rules and Orders and held that the application ought to have been filed in the form of miscellaneous case. The order is required to be set aside solely on the ground of injustice caused to the plaintiff. The High Court in exercise of general power of superintendence can interfere to prevent the miscarriage of justice.

It appears that the defendant no.3 died and the suit abated in respect of the said defendant. An application under Order 22 Rule 9 of the Code of Civil Procedure was filed for setting aside the abatement. The application was filed and also

captioned as the Misc._____ of 2022. It was for the court to register the said application as misc. case.

Hence, the order impugned is set aside. The learned Civil Judge (Junior Division), 2nd Court at Kandi, is directed register the said application as a misc. case and hear the same on merits, upon granting opportunity to the opposite parties to file their written objection and contest the same.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)