

C.O. 250 of 2006

In the matter of : Smt. Pammi Singh

As usual none is appearing on behalf of the petitioner.

This revisional application is awaiting adjudication for seventeen years.

Hon'ble Supreme Court in the case of **Robin Thapa vs.**

Rohit Dora reported in **AIR 2019 SCC 3225** held :-

“8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

Under such circumstances, I am inclined to dispose of the application on merit.

This application under Article 227 of the Constitution challenges the Order No. 65 dated 21.12.2005 passed by the learned Trial Court. By the impugned order, learned Trial Court was pleased to reject the petition under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant. The plaintiff filed the suit for declaration of title in respect of suit property and also for declaration of his right to collect the licence fees from the occupants of the suit house coupled with mandatory injunction upon municipal authority to amend the record of Kolkata Municipal Corporation and for temporary injunction, receiver etc.

The defendant by filing the application submitted that ad valorem court fees on the valuation of the property is required to be given.

Learned Trial Court however, refused to accept such contention relying upon the decision of the High Court at Calcutta reported in AIR 1981 CAL at Page 189 and another decision reported in 1992 (2) CHN at Page 482. Since the suit is for declaration and permanent injunction the plaintiff has the liberty to file the suit at his own valuation. In absence of any prayer for recovery of possession or cancellation of any instrument plaintiff had no obligation to pay ad valorem Court fees upon the valuation of the property. The order impugned does not suffer from any perversity or there is nothing to indicate jurisdictional error committed by the learned Trial Court. This application under Article 227 of the Constitution of India does not merit any consideration and is dismissed.

Interim order, if any, stands vacated.

Copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)