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CO No. 724 of 2023

**Mohammad Ali & Ors.
versus
Shajahan Bibi & Ors.**

Mr. Arnab Roy,
Ms. I. Kundu,
Mr. S. Mukherjee,
Ms. D. Mukherjee.

.... For the petitioners.

Mr. Siva Prasad Ghose

..... for the opposite parties.

This revisional application has been filed challenging the order dated 16th January, 2023 and also the order dated 1st February, 2023 whereby learned Appellate Court disposed of the application *ex parte* under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

Petitioners after entering appearance filed an application under Section 151 of the Code of Civil Procedure with a prayer for recalling the order dated 16th January, 2023 on the ground that caveat was filed on 13th January, 2023.

Learned advocate appearing on behalf of the petitioners has submitted that injunction application under Order 39 Rule 1 and 2 of the Code of Civil Procedure cannot be disposed of *ex parte* on 16th January, 2023 where there is caveat already filed on 13th January, 2023.

Learned advocate appearing on behalf of the opposite parties has submitted that information of caveat was not in the knowledge of the Appellate Court i.e. Additional District and Sessions Judge, 1st Fast Track Court, Barrackpore where the appeal was transferred by the Additional District Judge, 1st Court, Barrackpore.

From the documents as well as submission advanced on behalf of the parties to this revisional application, it appears to me that caveat was filed prior to disposal of the application Under Order 39 Rule 1 and 2 of the Code of Civil Procedure and in that view of the matter right to have an opportunity of hearing cannot be denied.

In the aforesaid facts and circumstances, both the orders dated 16th January, 2023 and 1st February, 2023 stand set aside.

Learned Additional District Judge, 1st Court, Barrackpore is requested to re-hear the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure in presence of both the parties preferably within 19th May, 2023 but not beyond 9th June, 2023.

Both the parties are directed to maintain status quo over the subject property till the disposal of that injunction petition.

Parties are directed to make communication of this order to the Learned District Judge, 1st Court,

Barrackpore.

With this observation and direction, the revisional application stands disposed of.

All the parties shall act on the server copy of this order duly downloaded from the official web site of this Court.

(Bibhas Ranjan De, J.)