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C.O. 784 of 2023

Mrs. Bhanumati R. Matalia
Vs
Sri Gopal Kumar Shaw & Ors.

Mr. Joydeep Mishra ... For the petitioner.

Mr. Siddheswar Chandra,
Mr. Sandip Dutta ... for the opposite party

Considering the urgency of the case, this unlisted matter being CO No. 784 of 2023 is taken up for hearing today as on day's list.

The order no. 130 dated 31.01.2023 passed in connection with Misc. Case No. 67 of 2015 is under challenge in this revisional application.

Having heard learned advocates for both the sides on the issue of rejection of an application under Section 151 of the Civil Procedure Code by the learned Judge 5th Bench, Presidency Small Causes Court, Calcutta.

only question before this Court is that whether the order impugned suffers from any illegality or not.

From the record it appears that one Ejectment Suit No. 302 of 2004 pending before the learned Judge 5th Bench, Presidency Small Causes Court, Calcutta was disposed of *ex parte* and being aggrieved the defendant brought an application under Order 9 Rule 13 read with Section 151 of the Civil Procedure Code before the same Bench with the prayer for restoration

of the suit. Learned Judge considered the prayer and allowed the Misc Case under Order 9 Rule 13 of Civil Procedure Code subject to payment of cost of Rs.8000/- out of which Rs.5000/- to be paid by the petitioner/defendant to the opposite party/plaintiff and rest Rs.3000/- to be paid to the D.L.S.A., Kolkata.

The petitioner/defendant did not comply the order of the learned Judge 5th Bench, Presidency Small Causes Court, Calcutta by depositing the cost and as a result the learned Judge dismissed the Misc. Case on 3.09.2022 for non-compliance of the direction passed in the order dated 20.05.2022 whereby the suit was restored subject to payment of cost.

After dismissal of the Misc Case on 3.9.2022 again defendant/petitioner has filed an application under Section 151 of the Civil Procedure Code with a prayer for recalling the order dated 3.9.2022. Learned Judge considered the application and recorded an order dated 31.02.2023, rejecting the application under Section 151 of the Civil Procedure Code.

Being aggrieved, defendant/petitioner challenged this order dated 31.01.2023 before this court invoking the jurisdiction under Article 227 of the Constitution of India.

Learned advocate appearing on behalf of the petitioner has submitted that appeal has been

preferred before the Chief Judge City Civil Court, Calcutta.

Order 43 Rule 1(d) specifically provided an appellate forum when a rejection order passed under Rule 13 Order 9 of the Civil Procedure Code.

Here in this case, petitioner filed an application under Section 151 of the Civil Procedure Code which was considered and rejected rightly on the ground of lack of jurisdiction. More so, learned Judge being functus officio cannot entertain any application under Section 151 of Code of Civil Procedure for recalling the dismissal order.

In the aforesaid view of the matter, I do not find any illegality or infirmity in the order impugned to interfere invoking the provision of Article 227 of the Constitution of India.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)