

27.09.2023  
Sl. No.3(DL)  
srm

**C.O. No. 1169 of 2023**

**Mrs. Sriparna Chakraborty & Ors.**

**Versus**

**Shampa Ghosh & Ors.**

Mr. Debasish Roy,  
Mr. Srinjay Sengupta,  
Mr. Sauravg Roy,  
Mr. Narattam Acharyya

...for the Petitioners.

Affidavit-of-service is taken on record.

It appears that the opposite party Nos.1, 2 and 3 have been served with a copy of this revisional application. Their learned Advocate has also been served. The contesting party in this proceeding is the opposite party No.1. The order impugned has been passed in a misc. appeal preferred by the opposite party No.1.

Thus, this Court does not find any reason to keep this revisional application pending, as the prayer of the petitioners is innocuous.

The petitioners submit that the defendant No.4/opposite party No.4 should be served with a notice of the Misc. Appeal No.363 of 2019, which is pending before the learned Additional District Judge, Fast Track (4<sup>th</sup> Court) at Alipore,

South 24-Parganas. According to the petitioners, the said defendant No.4/opposite party No.4 is a necessary party in the proceeding. The petitioners submit that the issues involved in the misc. appeal would be properly adjudicated if the defendant No.4/opposite party No.4 is represented in the proceeding.

Although, neither the Court nor the parties can compel a party to appear in a court of law, but this Court is of the view that service of copy of the misc. appeal upon the defendant No.4/opposite party No.4 should not have been dispensed with.

The petitioners also prayed for the requirement of service of notice of appeal upon the defendant No.4/opposite party No.4, but the learned lower appellate court rejected such contention of the petitioners on the ground that the defendant No.4/opposite party No.4 did not contest the injunction application before the learned trial Judge. There was no reason why a notice of the misc. appeal, should not be served upon him.

This Court is of the view that neither party will stand to lose if the notice of appeal is served upon the defendant No.4/opposite party No.4. It is up to the defendant No.4/opposite party No.4 whether to appear or not. Notice of

appeal should be served upon the defendant No.4/opposite party No.4 under the circumstances as the petitioners claim that the property was purchased from the predecessor of the defendant No. 4. Necessary directions shall be passed by the learned court below within two weeks from the date of communication of this order.

This order shall not be construed either as an observation on the merits of the misc. appeal or as an acceptance of the disputes raised by the petitioners.

Parties are at liberty to produce this order before the learned lower appellate court, by way of a put up petition, upon service upon all the parties, so that this order can be complied with by the learned lower appellate court.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**