

June 8, 2023
Sl. No.23
Court No.19
s.biswas

CO 1695 of 2023

Sk. Sahid Ali
vs.
Alamgir Molla

Mr. Arun Naskar

... for the petitioner

The court does not find any reason to interfere with the order dated April 21, 2023 passed by the learned Civil Judge (Junior Division), 4th Court, Seramore, Hooghly in Pre-emption Case No.20 of 2021. The petitioner filed an application for dismissal of the suit on the preliminary issue of the suit being barred by limitation. The application under Order 14 Rule 2(2)(b) of the Code of Civil Procedure, was rejected.

It is alleged that the pre-emption case was filed beyond seven months from the date of knowledge of such transfer and hence the suit should be dismissed.

According to this court, the preemptor claimed to be a non-notified co-sharer and sought protection of Article 97 of the Limitation Act. Moreover, the application was filed during the pandemic when the Hon'ble Apex Court had extended the period of limitation in filing suits and applications.

Order 14 Rule 2 states that the preliminary issue can be decided only when the issue relates to

jurisdiction of the court or there is a bar created by law.

Hence, the learned court below did not err in passing the order impugned. Limitation being a mixed question of law and fact must be decided at the final hearing of the suit on the issue of maintainability, strictly in accordance with law. Only a point of law can be decided as preliminary issue, without requirement of evidence.

The revisional application is dismissed.

(Shampa Sarkar, J.)