

In the matter of : Abul Kalam Mondal

As usual none is appearing on behalf of the petitioner.

The matter was earlier adjourned twice on 07.6.2023 and 14.6.2023.

In view of the order dated 14.6.2023 I am inclined to dispose of the revisional application on merit based on materials available with the record.

In view of the mandate of Hon'ble Supreme Court given in the case of **Robin Thapa vs. Rohit Dora** reported in **AIR 2019 SCC 3225** held that ;

"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."

This revisional application under Article 227 of the Constitution of India challenges the impugned order dated 14.2.2014 passed by the Civil Judge, Jr. Division, 2nd Court, Barasat in Misc. Case No. 113 of 1990.

Upon perusal of record, it appears that in a proceeding under West Bengal Land Reforms Act, 1955 the opposite party no. 1 tendered a copy of R.S. Record of right which was not accepted by learned Trial Court. Thereafter an application was filed on behalf of the opposite party seeking direction of the concerned B.L. & L.R.O. to produce the copy of R.S.R.O.R. Learned Trial Court, however, rejected the application on the ground that B.L. & L.R.O. was neither a party to the proceeding nor he was present in the Court room at any point of time.

True, it is Rule 7 of Order 16 empowers the Court to direct any person present in the Court room to adduce any evidence or to produce any document but learned Trial Court failed to appreciate the fact that the opposite party when prayed for direction upon the competent authority to produce the certified copy of R.S.R.O.R. the prayer should not have been rejected on the ground that B.L. & L.R.O. was not present in the Court room. Learned Trial Court ought to have issued summon at the cost and risk of the opposite party directing the B.L. & L.R.O. to produce the document before the Court. Instead of taking pedantic view the learned Trial Court ought to have issued summon under Rule 7A. The order impugned manifests lack of exercise of jurisdiction on the part of the learned Trial Court and it warrants interference.

The impugned order is set aside with the direction upon the learned Trial Court to issue summon upon the concerned B.L. and L.R.O. Habra to produce the attested copy of record of R.S. Record of Rights at the cost of the opposite party or copy otherwise admissible in evidence.

With this the revisional application is disposed of along with application, if any.

Interim order of stay, if any, stands vacated.

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

(Siddhartha Roy Chowdhury, J.)