

S/L 15  
26.06.2023  
Court. No. 29  
*Suwayan*

**CO 2624 of 2019**

**Adil Firoz & Ors.  
Vs.  
Sri Chanchal Ghosh & Anr.**

*Mr. Debjit Mukherjee  
Mr. Avirup Mondal  
Mr. A. Z. Mondal*

*...for the petitioners.*

1. Learned Advocate for the petitioners is present.
2. The affidavit-of-service as filed on behalf of the petitioners be taken on record.
3. Despite service none appears on behalf of the opposite parties.
4. Accordingly, this Court proposes to dispose of the instant revisional application in absence of the opposite parties.
5. Heard learned Advocate for the petitioners at length.
6. The instant case is now taken up for passing appropriate order.
7. By filing the instant revisional application under Section 227 of the Constitution of India the plaintiffs/petitioners have impugned the Order No. 9 dated 03.07.2019 as passed by learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Alipore in Title Suit No. 878 of 2017 whereby and whereunder learned Trial Court rejected the plaintiffs' application for withdrawal of suit. In support of the instant revisional application learned Advocate for the revisionists at the very outset submits

before this Court that Order 23 of the Code of Civil Procedure postulates that it is the prerogative of the plaintiffs to proceed with the suit or not. It is further submitted that it is the legislative intention in the event plaintiffs intends to abandon his suit, the Court cannot restrict him in doing so. However, in an appropriate case the Court may impose such cost upon the defendants as deemed fit and proper.

8. On perusal of the entire materials as placed before this Court it reveals that in Title Suit No. 878 of 2017 summons was not even issued to the defendants. Such being the position, there cannot be any justification on the part of the learned Trial Court to restrain him from withdrawal of his own suit rather to proceed with the said suit.

9. In view of such, this Court holds that the impugned order itself suffers from illegality for which the interference of this Court is very much called for.

10. Accordingly, the instant revisional application being CO 2624 of 2019 is hereby allowed.

11. Consequently, Order No. 9 dated 03.07.2019 as passed by learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Alipore in Title Suit No. 878 of 2017 is hereby set aside. Consequently, the plaintiffs' application for withdrawal of suit being Title Suit No. 878 of 2017 is hereby allowed.

12. As a result the Title Suit No. 878 of 2017 as pending before the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Alipore stands hereby withdrawn.

13. It is made clear that since Title Suit No. 878 of 2017 is a suit for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997. liberty is given to the present revisionists to file a suit afresh on the basis of the self-same notice of eviction which has been issued prior to the institution of Title Suit No. 878 of 2017.

11. Parties to act on the server copies of this order.

12. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

**(Partha Sarathi Sen, J.)**