

C.O. 2055 of 2014

In the matter of : Sri Lab Kumar Mitra & Anr.

None appears on behalf of the petitioners.

Earlier on 07.6.2023 and 14.6.2023 matter was adjourned suo moto in absence of learned counsel representing the petitioners.

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.”

Under such circumstances, I am inclined to dispose of the application on merit.

This revisional application under Article 227 of the Constitution of India challenges the Order No. 52 dated 17.5.2014. By the impugned order learned Trial Court was pleased to dismiss the petition under Order VII Rule 11(d) of Code of Civil Procedure filed by defendant nos. 1 & 2 at a stage when the witness action was started in a suit for partition. Learned Trial Court was absolutely justified in dismissing the application. This order impugned does not warrant any interference.

The application under consideration is devoid of merit and is dismissed.

Interim order of stay, if any, stands vacated.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)