

30.03.2023
Item No. 32
Court No.13.
S. De

C.O. No. 2175 of 2021

Pabitra Swarnakar & Ors.

Vs.

M/s. Welcome Construction & Ors.

Mr. Sourav Sen,
Mr. Partha Chakraborty,
Mr. Chayan Debnath,
Md. Obaid,

...for the petitioners.

This application under Article 227 of the Constitution of India has been preferred against the order dated 22.09.2021 passed by learned Civil Judge (Senior Division), Small Causes Court, Sealdah in Title Suit No.108 of 2015.

It is submitted on behalf of the petitioners that the evidence on behalf of both the parties were concluded and the argument was also heard in part as appearing from the order dated 02.12.2020. At this stage the plaintiff/opposite parties have come up with two applications, one under Order 26 Rule 9 of the Code of Civil Procedure and other under Section 151 of the Code of Civil Procedure seeking permission to repair the suit property at his own cost without reserving right to claim equity in future. Learned Court below by the impugned order was pleased to keep in abeyance the application under Section 151 of the Code of Civil Procedure but disposed of the

plaintiff's application under Order 26 Rule 9 of the Code and allowed the same on contest.

Being aggrieved by that order the present application has been preferred.

It is submitted on behalf of both the parties as there was no stay against the order impugned. Learned Commissioner has conducted considerable partition of the commission work and it will be concluded soon.

However, learned counsel appearing on behalf of the parties submits that let a direction be given upon the learned Commissioner as well as the learned Court below that the commission work should be concluded and report should be submitted within a specific time period and the pending Section 151 application should be disposed of within a specified time as the suit had reached its final stage.

In view of above, C.O. 2175 of 2021 is hereby disposed of with the direction upon the Court below to take appropriate action so that the commission work is concluded and the commission report be submitted preferably within a period of four weeks from the date of communication of the order and learned Court below will dispose of the pending application under Section 151 of the Code of Civil Procedure within a period of two weeks thereafter and will dispose of the

pending suit within a period of twelve weeks thereafter.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Ajoy Kumar Mukherjee, J.)