

13.7.2023
ct. 236
sk,sl. 22

C.O. 2085 of 2014
Lakshmi Narayan Gupta
-vs-
Kashinath Ram Shaw

None is appearing on behalf of the petitioner.

This revisional application is awaiting adjudication for last nine years.

The Hon'ble Supreme Court in Robin Thapa Vs Rohit Dora, reported in AIR 2019 S.C.C. 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 revisional application on merit.

This application under Article 227 of the Constitution of India impeaches order dated 25.4.2014 passed by the learned Civil Judge, Senior Division, 1st Court, Howrah in Title Suit No. 78 of 1981.

By the impugned order learned trial court refused to accord permission to the plaintiff to undertake the repair of wall in respect of his dwelling house and by a subsequent order, the prayer for local inspection was

also rejected. Admittedly, this is a suit for partition the plaintiff acquired title in respect of “B” schedule property by purchase from predecessor-in-interest of the opposite parties. He has been possessing the same by constructing three storied building and partly two storied building over the suit property. If the plaintiff/petitioner is allowed to undertake the work of plastering the outer wall of the building he has constructed, it cannot cause any prejudice to the defendant/opposite party. Learned trial court rejected the application only on ground that on earlier two occasions, such prayer was not allowed.

In my view there is no reason to refuse the prayer of the plaintiff/petitioner to carry out the necessary repair of wall at the building he constructed however, without prejudice to the rights of the parties.

Accordingly, the order is set aside.

The revisional application is thus, allowed.

Let a copy of this order be sent down to the learned trial court forthwith.

(Siddhartha Roy Chowdhury, J)