

09.10.2023
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AN/Ct. No.25

CO 3090 of 2023

**Raghunath Dey & anr.
versus
Sambhunath Dey**

Mr. Asit Baran Raut
Mr. Tuhin Subhra Raut
Ms. Ishita Raut

... for the petitioners

This application is directed against an order dated 16.08.2023 passed by the learned Civil Judge, Senior Division at Sealdah in Misc. Case No. 7 of 2023.

Learned counsel appearing for the petitioner submits that he has already served a copy of this revisional application upon the caveator. In spite of service, none appears for the opposite party. Liberty is granted to file affidavit of service in course of the day.

Learned counsel appearing for the petitioner submits that though 16.08.2023 was not fixed for hearing of the application under Section 5 of the Limitation Act filed in connection with Misc. Case no. 7 of 2023 under Order IX Rule 13 of the Civil Procedure Code, learned trial judge without affording any opportunity to the petitioners to contest the same, allowed such application.

It appears from the records that 16.08.2023 was fixed for hearing of the application under Order XXXIX

Rule 1 and 2 of the Civil Procedure Code and not under Section 5 of the Limitation Act.

This Court is of the considered view that without affording any opportunity to contest the application under Section 5 of the Limitation Act on merits, learned court below ought not to have allowed the same.

In view thereof, the order impugned dated 16.08.2023 insofar as it relates to allowing the application under Section 5 of the Limitation Act, is set aside and the same is restored to the file of the learned Civil Judge, Senior Division at Sealdah. The learned court below is directed to decide the said application after affording an opportunity to file a written objection against such application.

In the result, the instant civil revisional application stands **allowed**.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)