

September 25, 2023
Sl. No.443
Court No.19
s.biswas

CO 3281 of 2023

Smt. Raka Basu Roy and another
vs.
Smt. Nanda Brahma

Mr. Rabindra Kumar Jaiswal

... for the petitioners

The petitioners are directed to serve the revisional application upon the opposite party and file affidavit of service on the next date of hearing.

The petitioner has challenged the order dated September 1, 2023, passed by the learned Additional District Judge, 6th Court, Alipore, in Original Suit No.43 of 2023.

According to the petitioners, the amendment application was allowed in its entirety, upon consent of the opposite party, but no opportunity was given to the petitioners to file the amended written objection. Instead, the court proceeded with the evidence of P.W. 1.

The order is quoted below:

Today is fixed for F/chief of P.W.1 & hearing u/o 6 rule 17 obj IMT.

Plaintiff files hazira.

Defendant files petition, praying for time.

Time prayer is allowed.

Defendant files application u/o 6 rule 17 praying for amendment.

Prayer is heard, considered & allowed.

P.W.1 is resumed today, she is further examined in chief & deferred.

Death certificate of my mother marked as exhibit 1.

Plaintiff files declaration u/s 64 & 65, let it be kept with the record.

Fix 26.09.2023 for F/chief of P.W.1.

The order impugned, does not indicate such. It does not appear to the court that the amendment application was either moved or heard. Rather, the order records that the defendants/petitioners prayed, for time. However, if it is the case of the petitioners that the order had gone down wrongly and there had been incorrect recording of the submissions of the parties, the remedy of the petitioners would be before the learned court below.

Reference is made to the decision of **Md. Akram Ansari Vs. Chief Election Officer and Others** reported in **(2008) 1 SCC (CIV) 478**.

The petitioners are at liberty to approach the learned court below in accordance with law.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)