

Item No. 13  
11.08.2023  
Court. No. 19  
GB

C.O. 3977 of 2022

Shakti Prasad Mondal & Ors.  
Vs.  
Pushpa Rani Das & Ors.

*Mr. Souri Ghoshal*

*...for the Petitioners.*

*Mr. Pradip Kumar Mondal,*  
*Mr. Arka Mondal*

*...for the Opposite Party No.1.*

The revisional application arises out of two orders, namely, order dated October 29, 2022 and order dated November 4, 2022. Such orders were passed by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Diamond Harbour in Title Suit No.277 of 2022.

By order dated October 29, 2022, the suit was dismissed as not maintainable. The maintainability was decided as a preliminary issue. By an elaborate and speaking order, the suit was dismissed as not maintainable. The petitioners applied for recalling of the order. By order dated November 4, 2022, the learned court below refused to recall the order.

The ground for recalling agitated by the petitioners was that the date on which the suit was heard on the point of maintainability, was not a regular working day as there was a resolution of the bar.

The learned court found that on the relevant date, both the parties appeared before the court and addressed the court on their respective cases. The suit was dismissed on contested hearing. The presiding officer came to the

conclusion that after the suit was dismissed by the predecessor, the said court had become functus officio and as there was no error apparent on the face of the order which was required to be rectified, recalling of the order dated October 29, 2022, would not be permitted.

Aggrieved, the petitioners/plaintiffs have come before this Court.

It appears that the suit was heard on several dates and October 29, 2022 was fixed for hearing on the point of maintainability. The defendants had filed an application before the learned court for a decision on the maintainability of the suit, as a preliminary issue. Such preliminary issue was framed and the suit was dismissed as found not to be maintainable. The parties appeared before the court and made their submissions. As such, the ground for recall of the order that the same was passed on a day when the local bar had a resolution, does not bear any significance when the parties had the opportunity to contest the matter. Thus, the order dated November 4, 2022 refusing to recall the order dated October 29, 2022, does not call for any interference.

With regard to the challenge to the order dated October 29, 2022, this Court is of the view that the question merits which have been argued by Mr. Ghoshal, learned advocate for the petitioners with regard to the error in the order has to be decided in an appeal as the suit was dismissed. The point raised by Mr. Ghoshal that the learned court ought not to have dismissed the suit, but ought to have returned the plaint for presentation before the appropriate

court on finding that the suit was undervalued, is also a argument on merits. The suit was dismissed on other grounds, including under valuation. This Court is of the view that the appropriate remedy would be to prefer an appeal.

Accordingly, the petitioners may take appropriate steps as permitted by law. Liberty is also granted to take back the certified copy of the judgment by furnishing a photocopy thereof.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Shampa Sarkar, J.)**