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15.07.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

**C.O. No. 381 of 2023
I.A. No : CAN 1 of 2024**

**Smt. Susmita Mitra
Vs.
Rainbow Venture & Anr.**

Mr. Debjit Mukherjee,
Mr. Kaustav Bhattacharya ... For the petitioner.

Mr. Sanjib Bandyopadhyay ... For the O.P. No. 2.

The revisional application though has been brought to the list at the instance of the petitioner for extension of interim order, but on the consent of the parties the matter is taken up for final disposal.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction which is directed against the order dated November 15, 2022 passed by the 4th Court of learned Civil Judge, (Senior Division) at Alipore, District – 24 Parganas (South), in the said suit being Ejectment Suit No. 46 of 2016.

The learned Trial Judge by the order impugned has allowed an application under Order I Rule 10(2) of the Code of Civil Procedure filed by the added opposite party no. 2, holding inter alia that the applicant wanted to join as the partner of the defendant no. 1 firm to which the other partner has not raised any

objection and the determination of the nature of the partnership firm is a matter of trial.

Mr. Mukherjee learned advocate for the petitioner submits that the opposite party has signed the written statement on behalf of the defendant no. 1 firm. He had filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the suit on the ground that he being a necessary party has been left out. The said application was dismissed by the learned Trial Judge.

The suit is for eviction of a proprietorship firm, what is the involvement of the party applying for addition is not a relevant issue in the suit, therefore, the added party is neither a necessary nor a proper party to the suit, besides the trial of the suit has already commenced.

This order impugned, therefore, is not sustainable and is accordingly set aside.

C.O. 381 of 2023 is thus allowed.

In view of the disposal of the revisional application, the connected application for extension of interim order has become infructuous I.A. No : CAN 1 of 2024 is dismissed as such.

There shall be no order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)