

Item No. ML. 39

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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 931 of 2022

Sri Shyamal Khan & Ors.
Vs
Padma Dhara & Ors.

Mr. Suprobhat Bhattacharya,
Mr. Dwijadas Pattanayak. ... for the petitioner.

1. Affidavit of service is filed and taken on record.
2. None appears on behalf of the opposite parties.
3. Challenge in this revisional application is the order dated 04.09.2021 passed by the Additional District Judge, 2nd Court, Uluberia, Howrah in Title Suit No. 132 of 2020 pending before the learned Civil Judge (Senior Division), Uluberia, Howrah.
4. Learned counsel appearing on behalf of the petitioners has referred to the impugned order dated 04.09.2021 and submitted that learned Appellate Court did not apply his mind in disposing the application under Section 5 of the Limitation Act as well as petition with a prayer for stay of the order dated 02.12.2020 passed by the learned Trial Court.
5. I am in full agreement with the learned counsel appearing on behalf of the petitioners regarding non- application of mind by the learned Appellate

Court.

6. From the order itself, it has come to the notice of this Court that learned Judge did not dispose of the application under Section 5 of the Limitation Act by the order impugned and not only that learned Judge recorded in the order that the appellants are neither plaintiffs nor the defendants of the suit, therefore, no question of being affected by the impugned order (02.12.2020) arose.
7. From the record, it appears that the suit was filed by the opposite parties against this petitioners arraigned as the defendants of the suit and all three petitioners filed the Misc. Appeal before the learned Additional District Judge, 2nd Court, Uluberia, Howrah.
8. Therefore, I find that learned Appellate Court did not at all apply his mind in disposing the application under Section 5 of the Limitation Act or the application for stay of the order dated 02.12.2020.
9. In the aforesaid view of the matter, the order dated 04.09.2021 passed in Misc. Appeal No.43 of 2021 stands set aside.
10. Learned Appellate Court is requested to dispose of both the applications within 15 days from date.
11. Learned counsel appearing on behalf of the petitioner is at liberty to communicate this order to

the learned Appellate Court.

12. With the aforesaid observation, the revisional application stands disposed of.
13. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
14. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)