

Item No. 15

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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1098 of 2022

**Anath Sanfui & Ors.
Vs
Ahamad Ali Molla & Anr.**

Mr. Anujit Mookherjee,
Mr. Prithish Chandra.

... for the petitioners.

1. Affidavit of service is filed and taken on record.
2. None appears on behalf of the opposite parties.
3. Learned counsel appearing on behalf of the petitioners is present.
4. The instant revisional application has been filed assailing the order dated 7th March, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court, Baruipur, South 24 Parganas in connection with Misc. Case (Pre-emption) 116 of 2015, whereby learned Trial Judge dismissed the Misc. Case for default. Learned Judge recorded the order to the effect that petitioner was directed to show cause but no show cause was filed by the petitioner.
5. Learned counsel appearing on behalf of the petitioners has submitted that after demise of the sole petitioner of the Misc. Case (Pre-emption) 116 of 2015, his legal heirs including his spouse filed

an application before the Court on 13.12.2021, but without disposing of that application, on a subsequent date i.e. 07.03.2022, the Misc. Case was dismissed for default.

6. It is further submitted that learned counsel appearing on behalf of the petitioners was also restrained from filing any application under Order 9 Rule 4 of the Code of Civil Procedure towards restoration of the Misc. Case to its original file. It is specifically averred in paragraph 10 of this revisional application which runs as follows:

“10. The Petitioners were informed by their Learned Advocate that as the substitution application was pending adjudication and formally the Petitioners were not made a party to the proceedings in the Learned Court Below, the registry had prevented the Learned Advocate to take out an appropriate formal application for recalling the said order dated 7th March, 2022”

7. It has been further submitted that along with substitution application filed on 13.12.2021, original death certificate of the petitioner of the Misc. Case was filed but that was kept with the record.
8. On careful scrutiny of the entire relevant orders, I am in full agreement with the learned counsel appearing on behalf of the petitioners that prior to the dismissal of the Misc. Case (Pre-emption) 116 of 2015, one substitution application was filed on 13.12.2021 following death of the sole petitioner of

the preemption case, on 07.09.2021.

9. In this situation, learned Trial Judge ought to have disposed of that substitution application which was filed on 13.12.2021 prior to taking up Misc. Case (Pre-emption) 116 of 2015.
10. Considering all facts and circumstances, petitioners are being given liberty to file an application under Order 9 Rule 4 of the Code of Civil Procedure before the Trial Court and the learned Trial Judge will consider the application keeping an eye to the object of the code which was not to promote the failure of justice.
11. Petitioners are at liberty to file appropriate application mentioned above before the learned Trial Court on or before 7th October, 2024.
12. With this 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 the parties shall act on the server copy of this order duly downloaded from the official web site of this Court.

(Bibhas Ranjan De, J.)