

19.08.2024
(M/L-40)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2098 of 2024

Gopal Prasad & Anr.

-Vs-

Sri Dhiren Mitra

Mr. Probal Kumar Mujkherjee, Sr. Advocate,
Mr. Rahul Karmakar,
Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
Ms. Ruchira Manna,

... For the Petitioners.

Mr. Uma Sankar Banerjee,

.... For the Opposite Party.

Affidavits-of-service and the supplementary affidavit filed on behalf of the petitioners be kept with the record.

The plaintiffs in a suit for declaration are the petitioners of the instant application under Article 227 of the Constitution of India. The said suit being *Title Suit No. 689 of 2023* is pending before the 13th Bench, City Civil Court at Calcutta.

The learned Trial Judge by the order No. 95 dated March 03, 2015 had fixed April 23, 2015 for filing of written statement by the substituted defendants and by the part of the order no. 140 dated November 23, 2023 has dismissed the application filed by the petitioners praying that the written statement filed by the substituted defendants may not be accepted, holding that that the said substituted defendants had filed the written statement way back on June 02, 2015 but the plaintiffs never objected to such filing and the suit has reached to the stage of peremptory hearing.

There cannot be two written statements of the defendants on record. The substituted defendants since are coming into the shoes of the deceased defendant, they must accept the written statement already filed by their predecessor-in-interest; however, the substituted defendants are always at liberty to seek for amendment of the written statement already on record.

The order impugned is set aside, the written statement filed by the predecessor-in-interest of the substituted defendants shall be treated as their written statement; however, the said substituted defendants are at liberty to pray for amendment of the said written statement, particularly when the suit was taken off the peremptory hearing board on the prayer of the plaintiffs, vide order dated March 10, 2022.

The issues already framed, if necessary, be recast.

C.O. 2098 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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.)