

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

C.O. 2105 of 2024

Asha Tandon & Ors.

Vs.

Shree Shree Iswar Satyanarayanji & Ors.

Mr. Jishnu Chowdhury,
Ms. Saswati Sengupta,
Mr. Ayan Kumar Boral,
Ms. Abhidipta Tarafdar ... For the petitioners.

Mr. Pramit Kumar Ray, Ld. Sr. Adv.,
Mr. Sujit Gupta,
Ms. Atmaja Bandyopadhyay ... For the opposite parties.

Affidavit-of-service filed on behalf of the petitioners be kept
with the record.

The defendants in a suit for eviction are the petitioners in the
instant application under Article 227 of the Constitution of India,
which is directed against order dated April 25, 2024 passed by the
2nd Court of learned Civil Judge, (Senior Division), Howrah in the
said suit being Title Suit No. 152 of 2000.

The learned Trial Judge, on remand, is hearing an application
under Order XII Rule 6 of the Code of Civil Procedure and by the
order impugned, has fixed August 27, 2024 for such hearing.

The defendants are aggrieved by the observation of the learned
Trial Judge recorded in the order impugned that there is no
necessity to hear the issue on the point of maintainability of the
suit.

The learned Trial Judge, in forming the impugned opinion, has
misconstrued the judgment and order dated March 20, 2024
passed in C.O. 1701 of 2021 whereby the application under Order
XII Rule 6 of the Code was remanded for a decision afresh.

Even in an undefended suit, the Court, before decreeing, is
obliged to address the issue of maintainability of it. The principle
is equally applicable to a suit where the Court is to pronounce a
judgment on admission.

The observation of the learned Trial Judge therefore, is of no consequence to decide the pending application under Order XII Rule 6 of the Code. The defendants are free to raise the issue of maintainability of the suit.

In view of the nature of the suit and the age of it, the learned Trial Judge is requested to dispose of the said application as expeditiously as possible, but positively, within a period of two months from the next date fixed for hearing of the said application and in doing so, shall not entertain prayer of the parties for any unnecessary adjournment.

C.O. 2105 of 2024 is disposed of with the above observations without any order as to costs.

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

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

(Biswajit Basu, J.)