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02.07.2024

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

C.O. No. 2288 of 2024

**Namita Ganguly
Vs.
Sushanta Naskar & Ors.**

Mr. Ashim Kumar Roy,
Mr. Anirban Roy ... For the petitioner.

The plaintiff in a suit for declaration is the petitioner of the instant application under Article 227 of the Constitution of India, which is directed against Order No. 19 dated April 05, 2024 passed by the 1st Court of learned Civil Judge (Junior Division) at Barasat, District – 24 Parganas (North) in the said suit being Title Suit No. 683 of 2015.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner under Order XXVI Rule 9 of the Code of Civil Procedure for misquoting the provision of the Code.

Law is well settled that relief to a party cannot be denied for misquoting or non-quoting of a provision of law if he/she is otherwise entitled to such relief.

It appears from the record that the plaintiff is seeking a declaration that the defendants are carrying out construction over the 'B' schedule property without any sanction plan, such being the scope of the suit, the plaintiff is not obliged to demonstrate

that the defendants, in executing the said construction work, are not leaving sufficient space between the said construction and his property, as such neither investigation nor inspection of the said offending construction is necessary.

The order impugned, for the aforesaid reason, does not call for any interference.

C.O. 2288 of 2024 is disposed of with the above observations without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit and in doing so, shall not entertain the prayer of the parties for any unnecessary adjournment.

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.)