

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**C.O. 2235 of 2022
With
CAN 1 of 2024**

**Sambhu Bera @ Sambhu Nath Bera & Anr.
Vs.
Kartik Berta and Ors.**

Mr. Sandip Das ... For the Petitioner.
Mr. Siddhartha Banerjee
Mr. Rahul Karmakar
Mr. A.B. Das
Ms. S. Chongdar ... For the Respondents.

This is an application for recalling judgement and order dated March, 22, 2024 and by mistake recorded in the judgement that it is March 3, 2024.

As pointed out by the learned Advocates this mistake stands rectified.

Let judgment and order dated March 3, 2024 passed in CO 2235 of 2022 be rectified and made judgement and order dated March 22, 2024.

The application for recalling of the order dated March 22, 2024 is taken up for consideration.

Heard learned Advocate for the
respondent/applicant and learned Advocate for the
petitioner/opposite party.

S.D.

Perused the materials on the record.

It is the contention of the
respondents/applicants that their learned Advocate could

not make himself present on the date when the said matter was taken up for hearing, as he was engaged in another court.

It is further contended that as the non-appearance was due to the engagement of the learned Advocate in another court the absence may be condoned.

The petitioner/opposite party has contested this application for recalling by filing opposition and have contended that he does not admit these allegations save and except which are matters of record. It is further contended that necessary compliance is made pursuant to the order dated March 22, 2024.

Learned Advocate for the opposite party in this recalling application and petitioner in the main application submits that this application for recalling is not maintainable in the eye of law and when there is provision for review the applicants cannot file an application for recalling and inherent power under Section 151 CPC cannot be invoked.

Learned Advocates appearing for the petitioner submits that the petitioner has a remedy to file an application for recalling and it is for this reason the petitioner has filed this application for recalling for the purpose of making necessary submission with regard to the facts of the case.

Learned Advocated for the opposite party has relied upon a decision of this court in the case of

Narendra Parida Vs. Smt. Champaden Kharowar reported in 1996 SCC on line Calcutta 7. and a decision of the Hon'ble Supreme Court in AIR 1961 SCC on line SC 17 (Monhar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal). Learned Advocate submits that pursuant to the order passed in this application necessary construction is made upon obtaining permission from the Panchayat Authorities. Thus at this stage the order passed on March, 2, 2024 may not be recalled.

Upon hearing the learned Advocates and considering the contention made in the recalling application, this court is of the view that as the applicants have been able to make out sufficient cause for not appearing on the date of hearing and as this order is passed in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India and the learned Advocate for the opposite party who has sought permission to contest this case for relying relevant provisions of law in the interest of justice an opportunity should be granted for making necessary submissions.

Upon perusing the decisions relied upon by the learned Advocate for the opposite party in this recalling application, this court is of the view that these are not applicable to the facts of this case.

In the facts and circumstances of this case, the order dated March 22, 2024 passed in CO 2235 of 2022 stands recalled.

In the event any steps are taken in terms of the earlier order they will not be vitiated at this stage till the main matter is heard, and decided.

Fix the matter on 10.12. 2024 for hearing of CO 2235 of 2022.

Let this matter appear within the first five matters.

(Biswaroop Chowdhury, J.)

