

19.07.2024
(D/L-19)
Ct.-19
(Susanta)

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

C.O. 2520 of 2024

Dilip Kumar Bhakat @ Dilip Bhakat
-Vs-
Kavita Jaiswal & Ors.

Mr. Arjun Samanta, ... For the Petitioner.

The petitioner is one of the defendants of the Title Suit No. 68 of 1997, a suit for partition, which is pending before the 2nd Court of learned Civil Judge (Senior Division), Howrah.

The learned Trial Judge by the order dated January 15, 2016, had recorded abatement of the suit for the failure of the plaintiffs to bring the heirs and legal representatives of the deceased defendant no. 3 on record within the prescribed period of time.

Subsequently, the suit got dismissed for default on September 21, 2019.

The learned Trial Judge, however, by the order dated January 07, 2023 has recalled the order recording abatement of the suit. The learned Trial Judge, thereafter, has started proceeding with the suit.

The petitioner, at this stage, raised an objection that the order of dismissal of the suit since was neither set aside nor recalled, the suit cannot be proceeded with.

The learned Trial Judge by the order impugned dated April 10, 2024 has overruled the said objection holding *inter alia* that after recalling of the order of abatement, the parties have participated in the further proceedings of the suit without any objection, which implies that with the recall of the order of abatement, the order of dismissal was also recalled.

The suit was not pending on the date of dismissal of it for default of appearance of the plaintiff as it was already dismissed as abated, therefore it is rightly held by the learned Trial Judge that with the recall of the order of abatement, the suit was restored to its original file and number, the order of dismissal of the suit for default is of no consequence.

The order impugned does not call for any interference, C.O. 2520 of 2024 is disposed of with the above observations 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.)