

29.08.2024
Item No.16,
DL, Ct.19
A.J.

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

C.O. 3015 of 2024

**Sri Pradyut Chakraborty
-Vs-
Sri Kunal Chakraborty & Ors.**

Ms. Mallika Roy Chowdhury.
.....for the petitioner.

The present application under Article 227 of the Constitution of India is at the instance of the defendant no.4 in a suit for declaration of title and permanent injunction which is directed against Order No. 28 dated January 06, 2021 and Order No.43 dated July 03, 2024 passed by the 2nd Court of the learned Civil Judge (Junior Division) at Serampore, District: Hooghly in the said suit being *Title Suit No. 265 of 2017*.

The suit was posted for *ex parte* hearing against the defendant no.4 for his failure to file written statement within the prescribed period of limitation vide order dated July 11, 2018.

The petitioner long time thereafter on September 21, 2019 had filed an application under Section 151 of the Code of Civil Procedure for recalling of the said order.

The learned Trial Judge by the one of the orders impugned being Order No.28 dated January 06, 2021 has dismissed the said application and by the subsequent order impugned being Order No.43

dated July 03, 2024 has dismissed the counterclaim of the petitioner as infructuous.

In the absence of challenge to the said order dated July 11, 2018, the scope of challenge to the order refusing to recall the said order is very narrow.

The delay in praying the recall of the said order is fatal; therefore the learned Trial Judge has rightly refused to recall the said order.

The filing of additional written statement with counterclaim is a misconceived action as there is no written statement of the petitioner on record; the learned Trial Judge is therefore absolutely justified in dismissing the said counterclaim.

The orders impugned for the aforesaid reason do not call for any interference.

C.O. 3015 of 2024 is, thus, dismissed without any order as to costs.

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

(Biswajit Basu, J.)