

*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. 3310 of 2024

Sri Prasenjit Roy

Vs.

**Sri Ranjan Ghosh also known as Ranjan Kumar
Ghosh & Ors.**

Mr. Sujeet Kumar Maurya ...For the petitioner.

The instant application under Article 227 of the Constitution of India is at the instance of *proforma* defendant no. 3 in a suit for specific performance of contract, which is directed against the order dated July 09, 2024 passed by the 5th Court of learned Civil Judge, (Senior Division) at Alipore, District – 24 Parganas (South), in the said suit being Title Suit No. 112 of 2016.

The learned Trial Judge by the order impugned has allowed an application under Order XXII Rule 4 of the Code of Civil Procedure filed by the plaintiff for substitution of the heirs and legal representatives of the deceased defendant no. 1.

On such substitution of the heirs and legal representatives of the deceased defendant, the petitioner has now become defendant from the position of *proforma* defendant, which the petitioner is objecting.

There is no concept of *proforma* defendant in the Code of Civil Procedure. The plaintiff, by describing a party to the suit as *proforma* defendant, is only

indicating that the said party is a proper but not a necessary party.

The effect of such transposition of the petitioner would be decided in the suit, at this stage, the objection of the petitioner is pre-matured, the order impugned therefore, does not call for any interference.

C.O. 3310 of 2024 is dismissed 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.)