

**Item 28.11.
No. 2024
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**Ct
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 3372 of 2022

**Sri Loknath Ghosh
Vs
Sadhan Ghosh & Ors.**

Mr. Kushal Chatterjee.

.... For the petitioner.

Mr. Partha Pratim Roy,

Mr. G. Das.

... for the opposite parties.

1. Affidavit of service is filed and taken on record.
2. This revisional application has been preferred assailing the order dated 27th July, 2022 passed in connection with Title Suit No. 32 of 1984, wherein Learned Civil Judge (Junior Division), Bidhannagar dealt with an application for withdrawal of suit filed by the plaintiffs/opposite parties herein and accordingly Learned Trial Judge dismissed the Title Suit being No. 32 of 1984 for non-prosecution.
3. Learned counsel appearing on behalf of the petitioner has drawn my attention to the provision of Order 23 Rule 1(3) of the Code of Civil Procedure and tried to make this Court understand that Learned Trial Court cannot pass any order of dismissal for non-prosecution following an application for withdrawal of the suit.

4. Learned counsel appearing on behalf of the opposite parties has submitted that order impugned was passed dismissing the Title Suit for non-prosecution and without giving any liberty to file the suit afresh. Therefore, provision of Order 23 Rule 1 of the Code of Civil Procedure does not have any application.
5. Learned counsel appearing on behalf of the petitioner has submitted that in course of hearing of application under Section 17(2) of the West Bengal Premises Tenancy Act, opposite parties herein admitted the relationship of landlord and tenant between the parties but after withdrawal of this suit by the impugned order, opposite parties filed another suit prying into the track of Section 2(g) of the West Bengal Premises Tenancy Act and for that reason the right already accrued in favour of the defendant/petitioner herein cannot be curtailed by way of an application for withdrawal of suit.
6. On careful perusal of the provision of Order 23 Rule 1 of the Code of Civil Procedure, it is found that the entire provision deals with the liberty granted by the Court at the time of withdrawal of the suit. Here, in this case, no liberty was granted by the impugned order, which was passed dismissing the suit for non-prosecution without

giving any liberty to file fresh suit.

7. In my opinion, all the contentions put forth on behalf of the petitioner/defendant may be advanced in the later suit incorporating the prayer under Section 2(g) of the West Bengal Premises Tenancy Act, if filed at all.
8. Regard being had to the above, I find hardly any scope to interfere with the order impugned in this revisional application.
9. As a sequel, the revisional application stands dismissed.
10. Interim order, if any, stands vacated.
11. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)