

S/L 39
27.8.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 3791 of 2023

Abdus Sukur Khan & Ors.

Vs.

Dr. Achinta Kumar Halder & Ors.

Mr. S.P. Mukherjee, senior advocate

...for the Petitioners.

Mr. Jayanta Kumar Das

Ms. Madhumanti Das

...for the Opposite Party Nos.1-5

The instant application under Article 227 of the Constitution of India is directed against order no.31 dated Augusts 25, 2023 passed by the learned District Judge at Alipore, District: 24 Parganas (South) in *Misc. Case No.256 of 2021*.

The petitioners are the opposite party nos. 3, 4, 5, 10, 12 and 13 to the said Misc. Case which is in application under Section 92 of the Code of Civil Procedure filed by the opposite party nos. 1 to 6 herein.

No leave as required under Section 92 of the Code was obtained to initiate the said proceeding, the learned Trial Judge by the order impugned has granted the said leave.

Mr. S.P. Mukherjee, learned senior advocate for the petitioners submits that Section 92 of the Code contemplates filing of a suit upon a leave being obtained, but in the present case, no suit has been filed; only an application under Section 92 of the Code has been registered as a Miscellaneous Case; therefore, according to him, an infructuous leave has been granted; consequently, a direction to file written statement in such a proceeding is completely unwarranted.

Mr. Jayanta Kumar Das, learned advocate for the petitioners of the said Misc. Case, the opposite parties herein submits that the procedural irregularity can be regularized; he prays leave to take correctional measures in the Court below.

Heard learned advocate(s) for the parties, perused the materials-on-record.

The provision of Section 92 of the Code contemplates filing of a suit subject to grant of leave by the concerned Court as rightly suggested by Mr. Mukherjee.

It is equally correct, as submitted by Mr. Das, that the procedural defects can be cured.

The petitioners of the said Misc. Case therefore are granted liberty to obtain a fresh leave as required under Section 92 of the Code and to reclassify the said misc. case as a suit, only thereafter the learned Trial Judge shall fix a date for filing of written statement by the defendants in the said suit.

To facilitate the aforesaid exercise, the order impugned is set aside.

CO 3791 of 2023 is disposed of with the above terms 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 copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)