

D/L.15.
August 5, 2025.
MNS.

SAT No. 228 of 2023
+
CAN 1 of 2024

Sri Shyamal Kumar Ghosh and another
Vs.
Collector, Hooghly and others

Mr. Bhudeb Chatterjee

... for the appellants.

Re : CAN 1 of 2024 (recalling application)

1. In view of there being no representation on the part of the respondents at the time when the appeal was dismissed for default and the application having been filed in time, the principles of Order IX Rule 4 read with Section 107 of the Code of Civil Procedure are applicable and as such, prior service of notice is not being directed on the respondents. In any event, the respondents do not have a right of hearing under Order XLI Rule 11 of the Code; as such, prior service is not required.
2. Upon perusal of the averments made in the application, we find sufficient cause for the absence of the appellants on the relevant date having been made out.
3. Accordingly, CAN 1 of 2024 is allowed, thereby recalling the order dated February 26, 2024 and restoring SAT 228 of 2023 to its original file and number.

4. There will be no order as to costs.

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5. The second appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

6. This appeal will be heard on the following substantial question of law:

Whether, in view of the predecessor-in-interest of the plaintiffs/appellants having obtained the suit property from the concerned Zamindar under the Bengal Tenancy Act, with specific recording of his name in the RS ROR, the said right ripened into full ownership over the suit property after the promulgation of the West Bengal Estate Acquisition Act, which fundamental position of law was overlooked by the courts below in dismissing the declaratory suit of the plaintiffs/appellants.

7. The appellants shall put in due requisites and postal costs for service of notice of appeal on the principal defendants/respondent nos. 1 to 6 within a week from date.

8. Service of notice of appeal on the respondent nos. 7 to 20 is hereby dispensed with in view of the respondent no. 7 being one of the proforma defendants, and respondent nos. 8 to 20 being co-

plaintiffs with the present appellants in the trial court.

9. The trial court records shall be brought by special messenger at the cost of the appellants, also to be deposited within a week.

10. The appellants shall prepare and file the requisite number of informal paper books without comparing with the records within six weeks from the date of service of notice of arrival of the trial court records on the learned Advocate for the appellants.

11. Liberty to the parties to mention the appeal before the appropriate learned Single Judge having determination for inclusion in the list as and when the same is made ready for hearing.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)