

Ct. No. 22.08
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IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI
Civil Revisional Jurisdiction

C.O. 105 of 2024
Sri Arabinda Singha
-Versus-
Smt. Dulali Barman & Ors.

Ms. Suman Sehanabis ...For the Petitioner
Mr. Hillol Saha Poddar ...For the Opposite Parties

Being aggrieved by and dis-satisfied with the judgment and order dated 8th December, 2021 passed by the learned Additional District Judge at Tufanganj, Cooch Behar in connection with Civil Revision No. 3 of 2018, affirming thereby the order dated 4th September, 2018 passed by the learned Civil Judge (Junior Division) at Tufanganj in connection with Misc. Pre-emption Case No. 2 of 2008, petitioner has preferred this application.

It appears from the record that the pre-emptee made an application in a cryptic and illegible manner before the Court below stating that he needs to file copy of the two Deeds, Khajna receipt, Khatian receipt and Record of Rights in connection with the said case and he may be permitted to file those documents before the Court for adjudication of the real controversy between the parties. However, learned Trial Court rejected the said application filed on behalf of the

petitioner by an order dated 4th September, 2018 with a specific observation that the opposite party has not laid any ground as to why said documents could not be produced earlier before the Court.

Being aggrieved by the said order the pre-emptee/opposite party herein preferred a revisional application under Section 115 of the Code of Civil Procedure but the Court below by the order impugned rejected the said revisional application on the ground that the revisional application under Section 115 is not maintainable in view of the amendment of the Code of Civil Procedure, in Proviso to Section 115(1) of the Code. However, while disposing the said application the Court below was of clear view that the Trial Court did not even refer which documents were purported to be produced by the petitioner and whether such document was necessary to be produced in the interest of justice and final adjudication of the case. He also observed that the order of the learned Trial Court appears to be vague in so much so, only the Rule had been cited and the petitioner was denied the opportunity to produce such document just citing the Rule as if Procedure is the Master of Justice and not the Servant of Justice. If procedure becomes the Master

of Justice, Substantial Justice is eroded. However, he dismissed the revisional application only on the ground that the revisional application is not maintainable in view of above.

Learned Counsel appearing on behalf of the opposite parties raised objection contending that evidence of preemptor/opposite parties herein have already been completed and the Affidavit-In-Chief on behalf of the petitioner/pre-emptee has already been tendered before the Trial Court and at this stage if the documents are allowed to be produced before the Court then it will cause prejudice to the interest of the preemptor/opposite parties herein.

Having considered the submissions made on behalf of the parties and also on perusal of the application dated 10th July, 2018 it appears that the applicant/pre-emptee has not stated in the application as to what documents exactly he needs to file before the Trial Court and how they are relevant for the purpose of adjudication of the present application.

The whole object of order XIII, Rule 1 is not to penalize the parties but merely to prevent belated production of documents so that it may not work injustice to other side. The Court certainly has the

power to receive any document at a later stage, if the genuineness of the document is beyond doubt and it is relevant or material to decide the real issue in controversy.

In such view of the matter the order passed by the Trial Court and also the ultimate dismissal order of Court below does not suffer from any illegality or impropriety for the reasons stated above. Accordingly, the present application, being C.O. 105 of 2024 stands dismissed.

However, this dismissal order will not preclude the petitioner herein to file afresh application stating details of the documents and it's genuineness that he wants to file before the Court below and also how they are relevant for the purpose of adjudication of the real controversy between the parties. In the event of filing such application by the petitioner before the Trial Court within a period of three weeks from the date of communication of this order, the Court below will dispose of the said application first, preferably within a period of three weeks thereafter before proceeding for further trial of the said Preemption Case, keeping in mind the basic considerations like genuineness of the document(s) and the relevancy of

the document(s) for the purpose of adjudication of real controversy between the parties.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)