

04-11-2024
Court No.3
Sl. No. 63
S.Akhtar

**In The High Court At Calcutta
Circuit Bench At Jalpaiguri**

CO/162/2024

**SANCHAYITA GHOSH
VS
AIR VIEW HOTEL AND ORS.**

Mr. Dr. Navin Barik, Adv.
Ms. Esha Acharya, Adv.
...for the Petitioner

Mr. Sandip Mandal, Adv.
Mr. Abhilash Mittal, Adv.
Mr. Shivam Jaiswal, Adv.
...for the O.P. No. 2,3&4

Mr. Ratan Barik, Adv.
..for respondent no.5

Grievance of the petitioner is that an application filed under Order 40 Rule 1 of the Code of Civil Procedure, 1908 is pending before the Trial Court for long. One appeal is pending before the Learned Additional District Judge, Fast Track Court, Siliguri, wherein the original record has been called for. In effect, since the original record is not available, the Trial Court is not able to hear and dispose of the pending application filed under Order 40 Rule 1 of the Code of Civil Procedure, 1908.

The Learned Counsel for the petitioner submitted that pendency of the application

impedes dispensation of justice to the prejudice of the petitioner/plaintiff.

On the other hand, the Learned Counsel for the respondents submitted that since the record is lying with the Appellate Court, it is not possible for the Trial Court to hear and dispose of the said application.

After hearing both the Learned Counsels, this Revisional Application is disposed of with a direction that the Trial Court shall hear the application filed under Order 40 Rule 1 of C.P.C on the basis of authenticated copies of cause papers and documents. If necessary, the Trial Court can request the Appellate Court to remand the record for a limited period of time, for the purpose of the hearing of the application.

Any order passed by the Trial Court shall be subject to the final outcome of the appeal.

The application under Order 40 Rule 1 of C.P.C. shall be disposed of within 21 days, preferably, from the date of receiving of this order. The Trial Court shall hear the application on giving reasonable opportunity to both the parties without giving any undue adjournment. Written objection against the

aforesaid application if not filed, shall be filed within seven days.

A copy of this order may be sent to the Learned Trial Court as well as to the Appellate Court also.

The instant Revisional Application stands disposed of.

(SUGATO MAJUMDAR, J.)