

Court No. 6
(265719)

27.03.2025
(AD 19)
(S. Banerjee)

CO 1051 of 2025

Md Nurul Haque
Vs.
Md Mobin & Ors.

Mr. Partha Sarathi Chatterjee
Mr. Debayan Roy

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant/appellant and is directed against order no. 51 dated February 20, 2025 passed by the civil Judge (Sr. Division), First Court at Asansol, Paschim Bardhaman in connection with Title Appeal No. 22 of 2018.

The opposite party no. 1 herein filed a suit for eviction against the petitioner. Such suit was decreed and the petitioner preferred Title Appeal No. 22 of 2018.

The petitioner filed a petition praying for transmission of the case record to the learned trial Court for reconstruction of such record on the ground that some of the challans as well as the other documents were damaged. The petitioner also filed another petition praying for adjournment till the

proforma defendant nos. h(i) to h(iv) turns up after summons is served upon them.

By the order impugned the learned Judge of the first appellate Court rejected both the applications. The learned Judge of the first appellate Court after looking at the trial court records found that only the challans have been damaged and if the copy of such challans are submitted before the Court, that can be accepted.

Learned advocate for the petitioner submits that the copy of the Municipal Assessment Register was also damaged and he has taken steps to obtain a copy from the municipal authority.

It will be open to the petitioner to take appropriate steps after the petitioner receives such copy. However, this Court finds that the learned Judge of the first appellate Court was right in not accepting the prayer of the petitioner for transmission of the records to the learned trial Judge.

Insofar as the prayer for adjournment of the hearing of the appeal till the proforma defendants appear in the appeal, the learned Judge of the first Appellate Court after going through the records of the trial Court noted that the proforma defendants appeared before the learned trial Court but, they did

not contest the suit nor filed any written statement. The learned Judge of the first appellate Court further noted that it is only the defendant no. 1/appellant/petitioner herein who contested the suit and no relief was sought for against the proforma defendant.

The learned Judge of the first appellate Court rightly invoked the provisions of Order 22 Rule 4(4) of the Code of Civil Procedure and exempted the appellant from taking any further steps for causing their appearance. It appears that the appellants/petitioners herein cannot be said to have been prejudiced by such order exempting the appellant from serving summons upon the proforma defendant.

For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

CO 1051 of 2025, accordingly, stands dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)