

27.03.2025

Item no.DL30
Court No. 6

Asraf, A.R.(Ct.)

Case No.

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1092 of 2025

SAMAR KANTI DAS

.... Petitioner

VS.

SMT. BULU RANI MAHATA & ORS.

....Opposite Parties

For the Petitioner :

Mr. Amitava Mukherjee, Senior Advocate

Ms. Arpita Saha

Ms. Antara Das

....Advocates

This application under Article 227 of the Constitution of India is at the instance of the defendant no.5 in a suit for partition and is directed against the order no.8 dated 28th February, 2025 and the order no.4 dated 3rd January, 2025 passed by the learned Civil Judge (Senior Division), Jhargram in Title Suit No.15 of 2025.

By the order dated February 28, 2025 the application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 stood allowed on consent. In the order dated 3rd January, 2025 it was recorded that the written statement filed by the defendant no.5 was kept with the record.

The learned Senior Advocate appearing for the petitioner submits that the defendant no.5 did not file any written statement on 3rd January, 2025 but filed an application praying for rejection of plaint. He further submits that though the learned Trial Judge allowed the application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 on consent but the fact remains that the defendant no.5 did not give any consent for allowing the said application.

However, the fact as to whether the defendant no.5 gave consent for allowing the application under Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 cannot be decided by this Court in exercise of power under Article 227 of the Constitution of India. If it is the case of the petitioner that no consent was given for allowing the application for local inspection, it is open to the petitioner to approach the learned Trial Judge with an appropriate application in that regard. It will also be open to the petitioner to bring to the notice of the learned Trial Judge by filing an appropriate application that on 3rd January, 2025 no written statement was filed by the defendant no.5 but an application praying for rejection of plaint was filed. If such applications are filed, the learned Trial Judge is requested to dispose of the same as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observations, CO 1092 of 2025 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

(Hiranmay Bhattacharyya, J.)