

25th September,
2025
(AK)
20

C.O 1293 of 2024

Muhammad Yusuf and others
Vs.
Padamchand Madan Lal and others

Ms. Somali Mukhopadhyay
...for the petitioners.

Mr. Rohit Banerjee
...for the respondents.

1. Heard learned counsel for the parties.
2. The limited context of the present revision is a challenge to an order whereby the application of the revisionist-petitioners for addition of party under Order I Rule 10 of the Code of Civil Procedure in a suit for eviction has been dismissed.
3. In the impugned order, the learned Trial Judge recorded that the learned Advocates for the plaintiff and defendant no.1 were present but, on call, the learned Advocate for the petitioners in the Order I Rule 10 application was found absent and accordingly, the said application was “considered and rejected”, being not moved.
4. Although the expression “considered” is used, which otherwise might have been construed as an adjudication on merits, the supplementation of the said expression by the phrase “being not moved”

dilutes such aspect of consideration and makes it evident that the order, read as a whole, has to be construed to the effect that the learned Single Judge dismissed the application under Order I Rule 10 (2) of the Code of Civil Procedure for default.

5. Since, for the ends of justice, another opportunity ought to have been granted to the petitioners to attend and move the said application for addition of party, this court is of the opinion that the learned Trial Judge adopted a hyper-technical approach in dismissing the same for default at the first instance.
6. As such, the impugned order cannot be sustained and another opportunity ought to be given to the petitioners to move their application for addition of party.
7. Hence, C.O. 1293 of 2024 is allowed on contest, thereby setting aside Order No.23 dated January 30, 2024 passed by the learned Judge, Eleventh Bench, City Civil Court at Calcutta in Title Suit No. 223 of 2021 and directing the learned Trial Judge to re-hear the application under Order I Rule 10 (2) of the Code of Civil Procedure filed by the revisionist-petitioners on merits upon giving an opportunity of hearing to all parties.
8. It is, however, made clear that in the event the petitioners are not diligent this time to move the

said application for addition of party, it will be open to the learned Trial Judge to dismiss the same again for default.

9. There will be no order as to costs.
10. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)