

07.05.2025
Item no. 15.
Court No.6.
AB

C. O. 1511 of 2025

**Rupa Sarkar
Vs
Sanjib Kumar Ghosh & Others**

Mr. Aniruddha Chatterjee, Sr. Adv,
Mr. Sounak Mukherjeefor the Petitioners.

Mr. Animesh Paul,
Mr. Saptashwa Das,
Ms. M. K. Upadhyay
.....for the Opposite Parties.

Affidavit of service filed in Court today be kept
on record.

This application under Article 227 of the
Constitution of India is at the instance of the first
defendant in a suit for declaration of title and
permanent injunction and is directed against an order
being no.8 dated March 6, 2025, passed by the
learned District Judge at Howrah in Civil Revision
No.02 of 2023.

The opposite parties herein filed a suit for
declaration of title and permanent injunction. In such
a suit, the petitioner herein filed an application under
Order VII Rule 11 of the Code of Civil Procedure, which
stood rejected by an order dated July 27, 2023, passed
by the learned Trial Judge in Title Suit No.117 of
2023.

Challenging the order dated July 27, 2023, the
petitioner preferred an application under Section 115A

of the Code of Civil Procedure before the learned Additional District Judge, First Court, Uluberia. The learned Additional District Judge, First Court, Uluberia by an order dated September 15, 2023 dismissed the Civil Revision No.3 of 2023 upon holding that the same is not maintainable as the Court has no jurisdiction. However, the petitioner herein was given liberty to file an application under Section 115A of the Code of Civil Procedure against the order passed by the learned Trial Judge.

Thereafter, the petitioner filed an application under Section 115A of the Code of Civil Procedure before the learned District Judge, Howrah, which was registered as Civil Revision No.2 of 2023. By the impugned order, the said civil revision application stood dismissed.

After going through the said order, this Court finds that the submission of the learned Advocate for the petitioner was recorded that the petitioner was not willing to proceed with the civil revision application.

Mr. Chatterjee, learned Senior Advocate appearing for the petitioner submits that the petitioner is willing to proceed with the Civil Revision No.2 of 2023 before the learned District Judge at Howrah.

The learned advocate appearing for the opposite parties vehemently opposes the prayer of Mr. Chatterjee. He submits that the petitioner should not

be allowed to pursue the Civil Revision Application No.2 of 2023 after having submitted that the petitioner is not willing to proceed with the civil revision application.

After going through the said order, this Court finds that the learned District Judge, after holding that the revision application was barred by limitation, dismissed the same. The learned District Judge further recorded that the petitioner has not come with clean hands and misused the process of the Court.

From such recording made by the learned District Judge, it appears to this Court that the learned District Judge entered into the merits of the civil revision application.

In view of the said order, this Court is of the considered view that the learned District Judge did not proceed on the basis of the submission made by the learned advocate for the petitioner that the petitioner was not willing to proceed with the civil revision application. This Court finds that the learned Additional District Judge, First Court at Uluberia by order dated September 15, 2023 gave liberty to the petitioner to file application under Section 115A of the Code of Civil Procedure.

In view thereof, this Court is of the considered view that it cannot be said that the petitioner approached the Court with unclean hands. For such

reason, this Court is inclined to interfere with the order impugned. The order dated March 6, 2025, stands set aside. The civil revision application no.2 of 2023 stands restored to the file of the learned District Judge, Howrah. Learned District Judge, Howrah is directed to proceed with the civil revision application no.2 of 2023 in accordance with law.

At this stage, the learned advocate appearing for the opposite parties submits that an application under Section 5 of the Limitation Act is pending. Needless to mention that the said application is to be taken up first before the learned District Judge, Howrah proceeds with the hearing of the civil revision application no.2 of 2023.

With the aforesaid observations and directions, C.O. No.1511 of 2025 stands allowed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Hiranmay Bhattacharyya, J.)