

18.06.2025
Item No.07
Ct. No.446
RP

CO 1677 OF 2024

Tuhin Dey
Vs.
Smt. Taniya Dey

Mr. Debjit Mukherjee
Mr. Dyutimoy Paul
.... For Petitioner
Mr. Gopal Chandra Ghosh, Sr. Adv.
Mr. Rajkrishna Mondal
Miss. Sunandana Saha
.... For Opposite Party

1. This revisional application is directed against the order dated 5th April, 2024 passed by the learned Civil Judge, Senior Division, 3rd Court, Alipore in Title Suit No.1144 of 2023 whereby the petition filed under Order 39 Rule 7 of the Civil Procedure Code for local inspection by the plaintiff was allowed.
2. Learned advocate appearing for the petitioner/defendant submits that the order impugned is absolutely devoid of any reason and the submissions made before the learned Court was not recorded. It is further pointed that the petition for local inspection filed by the plaintiff before the learned trial Court was only considered and allowed and a member of the BAR was appointed as Advocate Commissioner to hold the local inspection. He relies on a decision of the Hon'ble Supreme Court reported in 2009(13) SCC 495.

3. Learned advocate appearing for the opposite party also raises objection. He, however, candidly submits that the order impugned is devoid of any reason. However, he submitted that the written objection to the said application under Order 39 Rule 7 of the Civil Procedure Code has not been filed with this revisional application.
4. Heard the learned advocates for the parties. Upon perusal of the records and after hearing the rival contentions it appears that the suit for partition and permanent injunction was filed by the present plaintiff/opposite party before the learned Civil Judge, Senior Division, 3rd Court, Alipore and the prayer for ad interim order of injunction was refused by the learned Court. Subsequently, this application under Order 39 Rule 7 of the Civil Procedure Code was filed. The said application was contested by filing written objection by the present petitioner. On perusal of the impugned order it transpires that the impugned order is apparently a cryptic one and without assigning any reason as to why such prayer has been allowed. Learned Court has not recorded the submission advanced by the parties before the learned Court. Therefore, in view of the above and considering the observations made by the Hon'ble Apex Court in the decision relied upon by the learned Advocate in 2009(13) SCC 495 that "exercise of

judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system to make known that there has been proper and due application of mind to the issue before the Court and also an essential requisite of principles of natural justice” this Court is of the view that the purpose would be subserve if the application is remanded back before the learned trial Court after setting aside the order impugned with a direction to the learned trial Court to hear out the application filed under Order 39 Rule 7 of the Civil Procedure Code afresh after giving an opportunity of hearing to both the parties and without granting any unnecessary adjournment to either of the parties. Hence, the order dated 5th April, 2024 is set aside.

5. Accordingly, this revisional application stands allowed.
6. There shall, however, be no order as to costs.
7. It is made clear that this Court has not entered into the merits of the case. The learned Court below is free to dispose of the application without being influenced by any of the observations made hereinabove as early as possible, preferably within a period of two months, from the date of receipt of the server copy of this order.

8. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[CHAITALI CHATTERJEE (DAS), J.]