

Sl. 345
31.07.2025
Court No.6
BP

C.O. 1756 of 2024
With
CAN 1 of 2025

Sri Ajit Kumar Pal & Anr.
-versus-
Samrat Burman & Ors.

Mr. Purnasish Gupta
Mr. Jayanta Kumar Kukhopadhyay
..for the petitioners

Re: CAN 1 of 2025

This is an application for restoration of the civil revisional application by recalling the order dated January 28, 2025.

After hearing Mr. Gupta, learned advocate appearing for the petitioners and after considering the averments made in the application this Court is of the considered view that the petitioners were prevented by sufficient cause for not appearing when the civil revisional application stood dismissed for default.

In view thereof, the order dated 28th January, 2025 stands recalled. The civil revisional application stands restored to its original file and number.

CAN 1 of 2025 stands disposed of.

The civil revisional application is taken up for immediate consideration.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated 1st April, 2024 passed by

the learned Civil Judge (Junior Division), 5th Court at Howrah in Title Suit No. 1083 of 2016.

Mr. Gupta, learned advocate appearing for the petitioners submits that the petitioners filed a suit for declaration of title and permanent injunction and in such a suit the learned trial judge passed an order of injunction restraining the opposite parties from raising any new construction in the suit property till the disposal of the suit. He further submits that the said order of injunction was subsequently affirmed by the learned judge of the appellate court. He further submits that the opposite parties herein are trying to change the nature and character of the suit property in the garb of repairing. He further submits that in the application for repairing no particulars of the repairing has been indicated and the learned trial judge without considering the said fact allowed the application by non speaking order.

After going through the application for repairs this Court finds that the opposite parties prayed for repairing the rooms by plastering the cracks and the bathroom on the second floor of the suit property and to fix the door, asbestos therein for protection and preservation of the same at their own costs. The estimated repairing cost has also been mentioned in the schedule of such application. Thus, this Court finds that the particulars of repairing though not specifically stated in the schedule has been stated specifically in the prayer portion of such application.

The repairing work as sought for by filing the application under Section 151 of the Code of Civil Procedure cannot be said to be a new construction. The learned trial judge after considering the Commissioner's report as well as the pictures attached thereto was right in allowing the application for repairs.

For such reasons, this Court is not inclined to interfere with such order.

Accordingly, C.O. 1756 of 2024 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)