

Court No. 6
(265719)

05.08.2025
(AD 10)
(S. Banerjee)

CO 2744 of 2025

Puspendu Kumar Jana & Ors.
Vs.
Tapas Kumar Bhowmick @ Bhunia

Mr. Arnab Roy
Mr. Satyam Mukherjee
Ms. Sayani Ahmed
Mr. Saibal Rakshit

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendant, who is the appellant in Title Appeal No. 14 of 2015, and is directed against an order being no. 62 dated February 18, 2025 passed by the learned Additional District Judge, 1st Court at Tamruk, Purba Medinipur. By the order impugned, the application under Order 41 Rule 23 of the Civil Procedure Code stood rejected.

Mr. Roy, learned advocate appearing for the petitioners submits that the original defendant could not complete his evidence due to his illness. He submits that for such reason, the petitioner prayed for remanding the matter back to the learned trial judge.

Where the suit is disposed of upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, pass an order of remand and may direct what issue(s) shall be tried under Order 41 Rule 23 of the Code.

In the case on hand the learned trial court has decided the suit on merits as a whole and has given findings on all issues. Thus the provisions of Order 41 Rule 23 does not stand attracted. That apart, the question of passing an order of remand under Order 41 Rule 23A may arise if the suit has been disposed of other than on a preliminary point and the decree is reversed in appeal and retrial is considered.

After going through the impugned order this court finds that the learned Judge of the first appellate court after taking note of the provisions of Order 41 Rule 23 of the Civil Procedure Code, was right in rejecting the said application praying for remand.

This court does not find any infirmity with the order impugned warranting interference under Article 227 of the Constitution of India.

Accordingly, CO 2744 of 2025 stands dismissed. However, there shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)