

10.02.2025

Sl. No.: 141
Court No.30
BM

C.O. 3999 of 2024

Swapan Das & Anr.
Vs.
Surajit Kotal & Anr.

Mr. Atanu Das

... for the petitioners

Mr. Suhrid Sur

... for the opposite party nos.1 & 2

1. Affidavit of service filed be kept with the record.
2. On being served the opposite parties are being represented.
3. The present revisional application has been preferred against an order dated 20.08.2024 vide pre-emption case No.24 of 2022 by the learned 2nd Court, Civil Judge, Junior Division at Chandannagar, Hooghly.
4. Vide the said order the learned trial court held as follows :-

“ The provision of O-VII R-11 is applicable in a suit where there is a plaint of the plaintiff. This is a pre-emption case under specific provision of WBLR Act filed by the petitioner through a petition for specific order; and again the O.P failed to establish any of the above mentioned ground for allowing his petition.

Hence, it is

ORDERED

That the instant application u/o VII r.11(d) of the C.P.C, filed by the O.P is hereby rejected on contest.

Hence, the instant application is hereby disposed of on contest.

Fix 26.09.2024 for further cross of PW-1.

*Sd/-
Civil Judge(Jr. Div.) 2nd Court,
Chandernagore, Hooghly.”*

5. On hearing the learned counsel for the parties, materials on record and the order under revision, it appears that the trial court has missed the provision under Section 141 of the Code of Civil Procedure.

6. Section 141 of the Civil Procedure Code is as follows :-

*“ **141. Miscellaneous proceedings** :- The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.”*

7. Accordingly, as the proceeding in the Code of Civil Procedure also apply to the miscellaneous proceedings, the order under revision dated 20.08.2024 in pre-emption case No.24 of 2022 passed by the learned 2nd Court, Civil Judge, Junior Division at Chandannagar, Hooghly, is not in accordance with law and is set aside.

8. The application under Order 7 Rule 11 of CPC is restored. The trial court is directed to dispose of

the said application on hearing the parties in accordance with law within a period of 30 days from the date of this order.

9. Learned counsels are at liberty to communicate the server copy of the order to the trial court.

10. It is clarified that this court has not gone into the merit of the application under Order VII Rule 11 of CPC.

11. The revisional application stands disposed of.

12. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)