

Sl 243
23.06.2025
Court No.6
BP

C.O. 4048 of 2024

Adya Properties Private Limited
-versus-
Rajmata Maharani (Smt.) Bibhukumari
Devi & Ors.

Ms. Labanyashree Sinha
Ms. M. Ali
Ms. N. Roy Chowdhury
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated September 19, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore in Title Suit No. 956 of 2022.

By the order impugned the application under Order 8 Rule 5(2) of the Code of Civil Procedure stood rejected.

The petitioner filed a suit for specific performance of contract. The defendant nos. 1 and 2 did not file the written statement. For such reason the petitioner filed an application under Order 8 Rule 5(2) of the Code of Civil Procedure praying for pronouncing the judgement on the basis of the facts contained in the plaint.

The learned advocate appearing for the petitioner submits that when the written statement has not been filed the statements made in the plaint should be deemed to have been accepted and the court should pronounce

the judgement on the basis of the facts contained in the plaint.

Order 8 Rule 5(2) of the Code of Civil Procedure states that where the defendant has not filed the pleading, it shall be lawful for the court to pronounce judgement on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved. Thus it is always left with the discretion of the court to require any such fact to be proved.

In the impugned order the learned trial judge directed the plaintiff to prove the facts contained in the pleading. For such reason, this Court is not inclined to interfere with the order impugned as the learned trial judge has assigned cogent reasons for rejecting the application under Order 8 Rule 5(2) of the Code of Civil Procedure.

At this stage the learned advocate appearing for the petitioner prays for a direction upon the learned trial judge to dispose of the suit expeditiously.

In the light of the submissions made by the learned advocate for the petitioner, C.O. 4048 of 2024 stands disposed of by requesting the learned Civil Judge (Senior Division), 2nd Court at Alipore to make an endeavour to dispose of Title Suit No. 956 of 2022 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

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.)