

JPD-06
Ct No.01
28.07.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 13 of 2025
IA No: CAN 1 of 2025

Smt. Radhika Dey
Vs.
Saira Banu and others

Mr. Momenur Rahman,
Mr. Bikash Singha

.... for the petitioner

Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay,
Ms. Madhushri Dutta,
Ms. Sristhi Sarkar,
Ms. Payel Chanda

.... for the opposite party/applicant

Re: CAN 1 of 2025 (recalling application)

1. CAN 1 of 2025 is an application for recall of an order dated July 21, 2025.
2. Learned counsel appearing for the applicant argues that the applicant, who was one of the proforma opposite parties in the revisional application, was not served properly, which is borne out by the concerned postal track report annexed to the affidavit-of-service which had been filed on the relevant date by the revisionist petitioner, which indicates that, insofar as the present applicant is concerned, the item was delivered to the sender,

clearly indicating that the service was not effected on the present applicant.

3. Upon hearing learned counsel for the parties, it transpires that the Court proceeded on the premise that good service had been effected on all the opposite parties and had taken up the matter whereas the present applicant, being a proforma opposite party to the revisional application, was not served properly.
4. Accordingly, there is merit in the application.
5. Hence, CAN 1 of 2025 is allowed on contest, thereby recalling the order dated July 21, 2025.
6. There will be no order as to costs.

Re: CO 13 of 2025

7. Heard learned counsel for the applicant as well as the revisionist petitioner afresh on the merits of the revisional application.
8. By the order impugned in the revisional application, while taking up an application, filed purportedly under Order XXIII Rule 3 of the Code of Civil Procedure, the Trial Court moulded the relief sought therein and, while turning down the application itself, in effect varied a previous order of *status quo* passed in the suit.
9. In the impugned order, the learned Trial Judge clearly recorded that in the compromise petition, the learned Trial Judge found admission of the

parties thereof with regard to ownership over portions of the suit land. In Clause IV of the terms of compromise, it was *inter alia* mentioned that a portion of transfer purportedly effected through the impugned deed (impugned in the suit) was valid and a portion thereof was invalid. The learned Trial Judge recorded that such declaration touches the interest of the other parties to the suit and the court cannot decree the suit on compromise *inter alia* on such terms.

10. The learned Trial Judge was perfectly justified up to this extent, since, unless all parties to a suit are parties to the compromise petition, no compromise decree can be passed. However, the learned Trial Judge went one step ahead and, going beyond the scope of Order XXIII Rule 3 of the Code, virtually modified the order of *status quo* which had previously been granted, permitting a transfer to be effected between the plaintiffs in favour of the defendant no.5.

11. Such a modification was not only beyond the purview of Order XXIII Rule 3 of the Code of Civil Procedure, which was the entire premise of the prayer made before the learned Trial Judge in the application which was being decided by the learned Trial Judge in the impugned order, the same traverses into the domain of Order XXXIX Rule 4 of

the Code of Civil Procedure which provides specific parameters, including change of circumstances and/or undue hardship, which are required to be established for the variation of an order of injunction/*status quo*.

12. Since no application or prayer for variation of the injunction order was made at all, it cannot be said that there was any application pending for adjudication before the Court on the date of the impugned order, which squarely comes within the ambit of Order XXXIX Rule 4 of the Code of Civil Procedure.

13. Learned counsel appearing for the applicant herein, who was a proforma opposite party in the revisional application, contends that if the impugned order is deemed to be one under Order XXIII Rule 3 of the Code, this Court does not have jurisdiction under Article 227 of the Constitution of India to interfere with the same. Even if it was an order deemed to be under Order XXXIX Rule 4 of the Code, an appeal would lie and the revisional application would also not be maintainable in such case.

14. However, neither of the said analogies are applicable here, since the impugned order is not an order passed under Order XXIII Rule 3 passing a compromise decree, as the application under Order

XXIII Rule 3 and the prayer made therein was itself turned down. The jurisdictional error in the impugned order comprises of the learned Trial Judge having, thereafter, granted a relief which was beyond the scope of Order XXIII Rule 3, in the absence of any application having been filed at all under Order XXXIX Rule 4 of the Code. The concept of undue hardship and/or change of circumstances is inbuilt in Order XXXIX Rule 4 and a specific case has to be made out by way of an application under the said provision by either of the parties to have an interim order of injunction varied, modified and/or set aside.

15. In the absence of any such specific application or case being made out, the learned Trial Judge acted entirely without jurisdiction in *suo motu* modifying the interim order of *status quo* granted earlier. Thus, the impugned order also does not partake the character of an order passed under Order XXXIX Rule 4 of the Code of Civil Procedure simply because there was no prayer before the court under the said provision nor any application for modification of the *status quo* order was filed as such.

16. Thus, the palpable jurisdictional error as indicated above taints the impugned order in all respects,

attracting this Court's power of judicial review under Article 227 of the Constitution of India.

17. Accordingly, CO 13 of 2025 is allowed, thereby setting aside the impugned order bearing Order No. 122 dated April 27, 2023 passed by the learned Civil Judge (Senior Division) at Jalpaiguri in Title Suit No. 44 of 2008.

18. It is made clear that any action taken pursuant to the order impugned herein, which has been set aside, and/or any deed which might have been executed in pursuance of the same, stand hereby reversed, revoked and annulled.

19. There will be no order as to costs.

20. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)