

S/L 5-6
20.05.2025
Court No.2
SD

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

CO 39 of 2025
With
CO 196 of 2024

Sakuntala Devi Mintri & Ors.

Vs.

Mrs. Omo Yuthok Pangda @ Mrs. Omo Yuthok Pangdasang & Ors.

Mr. Sakya Sen, Sr. Adv.
Mr. Debanjan Das
Mr. Shounak Mukherjee

...for the Petitioners.

Mr. Dipankar Deb

...for the Opposite Party No.1.

Re: CO 39 of 2025

Affidavit of service filed on behalf of the petitioners in Court today be kept with the record.

The defendant nos.1 to 18 in a suit for declaration of title and other consequential reliefs are the petitioners of the instant application under Article 227 of the Constitution of India which is directed against the part of the order dated January 29, 2025 passed by the learned Civil Judge (Senior Division), Kalimpong in the said suit being O.C. Suit No.3 of 2024.

The learned Trial Judge by the order impugned has fixed a date for hearing of the application filed by the defendant nos. 19.1 to 19.6 for acceptance of their belatedly filed written statement. On the said date, the petitioners had also filed an application praying time to file written statement on the ground of pendency of C.O. 196 of 2024.

The learned Trial Judge, by the order impugned, had refused to grant time holding that the time to file written statement by the defendant nos.1 to 18 has already expired and has posted the suit for ex-parte hearing against the said defendants.

The petitioners are aggrieved by the part of the said order.

Mr. Sakhya Sen, learned senior advocate for the petitioners submits that the written statement of the defendant nos. 1 to 18 though is ready but is yet to be filed. The said defendants, on January 29, 2025 had only prayed for time to file the written statement on the ground that the order rejecting

their application under Order VII Rule 11 of the Code of Civil Procedure is under challenge in a revisional application. He further submits that the learned Trial Judge has misconstrued the prayer for adjournment as a prayer for extension of time to file the written statement.

Having heard Mr. Sen and on perusal of the materials-on-record, it appears that the time to file the written statement by the defendant nos. 1 to 18 has expired, nonetheless, they are entitled to pray for acceptance of the same subject to demonstration of sufficient cause for not filing it within the prescribed period of limitation.

The learned Trial Judge, by posting the suit ex-parte against the said defendants without affording them opportunity to apply for acceptance of their written statement to be filed belatedly consequent upon refusal of their prayer for adjournment, has acted with material irregularity, therefore, the part of the order impugned whereby the suit has been posted for ex-parte hearing against the said defendants, is set aside.

The said defendants are at liberty to apply before the learned Trial Judge for acceptance of their written statement to be filed belatedly, if such prayer is made, the learned Trial Judge shall consider the same in accordance with law, without being influenced by the fact that this Court has set aside the portion of the order dated January 29, 2025 whereby the suit was posted ex-parte against the defendant nos. 1 to 18.

CO 39 of 2025 is disposed of with the above terms without any order as to costs.

Re: CO 196 of 2024

This revisional application be de-tagged and on the prayer of Mr. Sen, the hearing of the revisional application is adjourned; let it be placed in the list of **next available Circuit Bench.**

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)