

S/L 54
13.08.2025
Court. No. 3
Suwayan

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

CO 117 of 2025

**Bakter Ali & Anr.
Vs.
Khunuannessa Bewa & Ors.**

*Mr. Swarup Das
Mr. Sourish Roy*

...for the petitioners.

1. The affidavit-of-service as filed today on behalf of the petitioners is taken on record.
2. None appears on behalf of the opposite parties despite service.
3. By filing the instant revisional application under Article 227 of the Constitution of India the petitioners who are the defendants before the learned trial court have impugned the Order no. 109 dated 20.11.2024 as passed by the learned Civil Judge (Junior Division), Dinhata, Cooch Behar in Title Suit no. 34 of 2007 whereby and whereunder the said trial court restored the Trial Suit no. 34 of 2007 to its original file and number on the basis of a put up petition filed by the plaintiffs.
4. At the time of hearing, Mr. Das, learned Advocate appearing on behalf of the defendants/revisionists draws attention of this Court to the certified copy of the Order no. 108 dated 16.08.2024. It is submitted by Mr. Das that on 16.08.2024 before the learned trial court the defendants filed their 'hazira', however, the plaintiffs were absent and on account of such learned trial court dismissed the said suit for non-prosecution.

5. It is further submitted by Mr. Das that all on a sudden by Order no. 109 dated 20.11.2024 learned trial court restored the said Title Suit no. 34 of 2007 on the basis of a put up petition filed by the plaintiffs without resorting to the provision of Order IX of the Code of Civil Procedure.
6. On careful perusal of the entire materials as placed before this Court, this Court finds sufficient justification in the submission of Mr. Das, learned Advocate for the revisionists.
7. It reveals from the Order no. 108 dated 16.08.2024 as passed by the learned trial court in Title Suit no. 34 of 2007 that the learned trial court in absence of the plaintiffs dismissed the said suit for non-prosecution when the defendants are present by filing 'hazira'.
8. In considered view of this Court the said Order no. 108 dated 16.08.2024 is faulty inasmuch as learned trial court ought to have dismissed the said suit for 'default' instead of 'non-prosecution' in view of fact that on behalf of the plaintiffs no prayer has been made for dismissing the said suit for non-prosecution.
9. It further appears to this Court that by Order no. 109 dated 20.11.2024 the trial court restored the said Title Suit no. 34 of 2007 to its original file and number without resorting to the provision of Order IX of the Code of Civil Procedure even without securing prior service of notice upon the defendants as envisaged under Order IX Rule 9 of the Code of Civil Procedure.

10. In view of the discussion made hereinabove, this Court thus finds sufficient merit in the instant revisional application.
11. Accordingly, CO 117 of 2025 is hereby allowed.
12. Consequently, the Order no. 109 dated 20.11.2024 as passed in Title Suit no. 34 of 2007 by the learned Civil Judge (Junior Division), Dinahata, Cooch Behar is set aside.
13. Consequently, the Order no. 108 dated 16.08.2024 is modified by holding the Title Suit no. 34 of 2007 is treated as dismissed for default.
14. In view of the dismissal of Title Suit no. 34 of 2007 all subsequent orders as passed in connection with Title Suit no. 34 of 2007 by the said trial court are also hereby set aside.
15. Before parting with, liberty is given to the learned Advocate-on-Record for the petitioners to communicate the server copy of this order to the learned trial court.
16. Learned trial court is directed to act on the basis of the server copy of this order.
17. Department is also directed to forward a copy of this order to learned trial court forthwith.
18. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)