

In the Court of Additional District & Sessions Judge,
2nd Court, Sealdah, South 24 Parganas
Misc. Appeal 41 of 2022
CIS Registration no.41 of 2022
Present: Sri Abir Chatterjee, Additional Dist. & Sess. Judge.
JO-UID WB00833

Order No.14
28.08.2024

Parties file hazira.

Today is fixed for order in connection with the present appeal.

Two separate application are pending before this forum.

Firstly, the application under section 5 of the Limitation Act read with section 151 of C.P.C. filed by the appellant for condonation of delay.

Another application has been filed from the side of the respondent questioning the maintainability of the appeal.

It appears that Ld. Trial Court vide order dated 27.01.2020 was pleased to hold that suit property is a thika structure and the suit for eviction of trespasser and recovery of possession from the thika property and accordingly dismissed the suit.

Apart from the fact that property is a thika property no other reasons has been attributed in the said order but the order dated 02.02.2022 reflects that it was dismissed on the point of maintainability.

It also appears that no decree was drawn by the trial court subsequent to the dismissal of the suit. The provisions of Section 2(2) of C.P.C. is quite clear regarding drawing up of a decree. Ld. Trial Court had misled himself by holding that no judgement was passed by the court for which decree cannot be drawn. It is stated that decree includes rejection of the plaint or any disposal of the suit on preliminary point.

Hence, a decree is required to be drawn.

Accordingly, the L.C.R. is returned back to the Ld. Trial Court with a direction to immediately draw a decree and returned the L.C.R. forthwith.

The entire exercise should be completed within 20.09.2024.

To **20.09.2024** for further order and L.C.R. (with decree drawn up).

Dict. & Corr. by me,

Sd/-
Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.

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