

29 24.12.2014

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C.O. 4106 of 2014

Sirajul Haque
Vs.
Sayeda Parvin

Mr. Bikash Ranjan Bhattacharyya
Mr. U. S. Chattopadhyay
..for the Petitioner

Mr. Uttiya Ray
..for the Opposite Party

The primary grievance of the petitioning defendant is that the plaintiff dodged the caveat lodged by the petitioner to institute the suit in the name of some person other than the named caveatee. The plaintiff applied for the ex parte order to be vacated on such ground and the trial court found that since the name of the caveatee was different, the application had to be treated as one under Order XXXIX Rule 4 of the Code. The application has been dismissed.

Since it appears that the caveat was lodged against Bajmeara Begum and the suit has been filed by Sayeda Parvin and the claim in the suit is adverse to Bajmeara Begum, it cannot be said that the suit was designed to dodge the caveat and mischievously obtain an ex parte order.

However, in so far as the petitioner's application of limited import before the trial court has been treated as an application under Order XXXIX Rule 4 of the Code and the petitioner is robbed of the opportunity of making a substantive application for vacating the injunction, C.O. 4106 of 2014 is disposed of by not interfering with the order impugned dated December 18, 2014 but by leaving the petitioner free to apply afresh under Order XXXIX Rule 4 of the Code before the trial court.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon

compliance of the requisite formalities.

(Sanjib Banerjee, J.)