

Party Name : RATAN CHAKRABORTY & ORS Vs MILAN RANI GHOSH & ORS

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This petition is a total abuse of the process of the Court. The petitioner is defendant in Title Suit 06 of 2012. He was proceeded against *ex-parte* on 18.02.2015. Thereafter evidence of the plaintiff was recorded on 13.03.2015. Counsel for the plaintiff was heard and the matter fixed for delivery of the judgment.

In the meantime, the Presiding Officer of the Court was transferred.

The plaintiff filed CRP No. 81 of 2015 before this Court challenging the order dated 18.02.2015 but that petition was dismissed by this Court on 17.07.2015. It appears that in the meantime the petitioner had also filed an application for vacating *ex parte* order dated 18.02.2015 before the trial Court which was also rejected on 19.06.2015. This order has not been challenged and obviously could not be challenged because the order proceeding *ex parte* has been upheld by this Court in CRP No.81 of 2015.

Thereafter the learned trial Court on 13.08.2015 held that since his predecessor had heard arguments it was necessary for the Presiding Officer to re-hear the arguments of the plaintiff. Thereafter on 10th September, 2015 counsel filed an application under Section 151 CPC for framing of issues and taking evidence thereof.

In my view this application is totally misconceived and an abuse of the process of the Court. Once the defendant has been proceeded against *ex parte* there is no question of issues being framed or the defendant being permitted to lead evidence. The defendant can only join the proceedings and argue the matter on the basis of whatever evidence is on record. The petition is accordingly dismissed. The learned Court is directed to hear and decide the matter on 14th October, 2015. The Registry shall send a copy of this order to the Trial Court. In view of this total reprehensible conduct on the part of the petitioner in repeatedly filing petitions it is made clear that the trial Court shall not entertain any fresh petition on behalf of the petitioner herein.

Petition is dismissed.