

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP.No. 71 of 2014

Sri Parimal Chakraborty,
son of late Mati Lal Chakraborty,
resident of village : Tepania,
P.S. & P.O. Radhakishorepur,
Udaipur, District : South Tripura

..... Petitioner

-V E R S U S-

Sri Maran Chandra Saha,
son of Haridas Saha,
resident of Village Tepania,
at present residing at village Shalgarah,
P.S. & P.O. Radhakishore Pur,
Udaipur, District : South Tripura

..... Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. B. Banerjee, Advocate
For the respondent	:	Mr. I. Chakraborty, Advocate

Date of hearing & judgment & order	:	16.06.2015
---------------------------------------	---	-------------------

Whether fit for reporting	:	No
---------------------------	---	-----------

JUDGMENT & ORDER (ORAL)

Heard Mr. B. Banerjee, learned counsel appearing for the petitioner and Mr. I. Chakraborty, learned counsel appearing for the plaintiff-respondent.

[2] The plaintiff, the respondent herein, instituted a suit for recovery of possession under Section 6 of the Specific Relief

Act, 1963 along with recovery of mesne profit. The plaintiff was in possession since long, though he had no title over the suit land as described in the schedule appended to the plaint. The plaintiff was allegedly dispossessed by the petitioner, the sole defendant in the suit, from the suit land and that has given rise of the cause, according to the plaintiff for filing the suit.

[3] The grievance of the petitioner is that the order for ex-parte proceeding was passed by the trial court, the Court of Civil Judge, Jr. Division, Udaipur, South Tripura. The petitioner approached the trial court for setting aside the said ex-parte order. On 10.07.2014 an application in this regard was filed by the petitioner under Order IX Rule 7 of the C.P.C. for setting aside the order for ex-parte proceeding dated 17.04.2014, accompanied by an application for condoning the delay that occurred in filing the said application. Those applications were not separately registered, as it appears from the records.

[4] The trial court by the order dated 10.07.2014 rejected the application for condoning the delay and as consequence thereof the application for setting aside the said order dated 17.04.2014 passed in T.S. No. 06 of 2013 was as well dismissed. The trial court thereafter proceeded with the suit and finally passed the ex-parte judgment and decree. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the said judgment dated 21.08.2014 delivered in T.S.

No.06 of 2013, fundamentally for affording the defendant the opportunity to contest the suit.

[5] Mr. Banerjee, learned counsel appearing for the petitioner has submitted that the written statement has been filed by the petitioner on 19.03.2014, before passing the said order for proceeding ex-parte. However, for the said order for proceeding ex-parte the said written statement was not considered for any substantive purpose.

[6] Mr. I. Chakraborty, learned counsel appearing for the respondent has fairly submitted that the petitioner may get one chance for contesting the suit if the petitioner is agreeable to undertake that he will not insist for any adjournment on frivolous ground for dragging the case.

[7] Having regard to this limited consensus, the impugned ex-parte judgment and decree dated 21.08.2014 delivered in T.S. No. 06 of 2013, by the Civil Judge, Jr. Division, Udaipur, South Tripura is interfered with and set aside. As the order dated 10.07.2014 has also been questioned, this Court in exercise of jurisdiction as provided under Section 105 of the C.P.C. is inclined to interfere with the said order dated 10.07.2014 and accordingly, the said order dated 10.07.2014 is set aside.

[8] By that order the prayer for condoning the delay of 85 days was rejected. As Mr. I. Chakraborty, learned counsel

appearing for the plaintiff/respondent has acceded that he has no objection if the said delay is condoned, this Court is inclined to condone the delay of 85 days as recorded by the trial court. As consequence thereof, on the basis of the limited consensus arrived between the parties and as consequence thereof, the order dated 17.04.2014 by which the suit was declared to proceed ex-parte is also interfered with and set aside.

[9] Accordingly, this petition stands allowed. The parties are directed to appear before the Court of the Civil Judge, Jr. Division, Udaipur, South Tripura on 6th of July 2015 when the trial court should proceed from the stage after filing of the written statement. Even though, there is a limited consensus, this Court is of the considered view that the petitioner shall pay cost to the plaintiff/respondent. The cost is determined at Rs. 500/- and to be paid by the next date as fixed by this Court.

JUDGE

A. Ghosh