

S/L 8
21.12.2020
Court. No. 19
GB

C.O. 1225 of 2020
With
CAN 1 of 2020

Somnath Sarkar
Vs.
Ms. Atasi Saha & Anr.

(Through Video Conference)

Mr. Aniruddha Chatterjee,
Mr. Debabrata Roy.

...for the Petitioner.

Mr. Kushal Paul.

...for the Opposite Parties.

This revisional application has been filed challenging the order dated August 7, 2020 passed by the Learned Judge, 2nd Bench, City Civil Court at Calcutta in Title Suit No.467 of 2020.

It is the contention of the petitioner that while rejecting the application under Order VII, Rule 11 of the Code of Civil Procedure filed by the defendants/opposite parties, the learned court below ought to have *suo motu* passed a decree upon admission with regard to the pleadings that the daughters did not have any share in the property. It is submitted that the court on its own motion, if admission made by a party was clear and unambiguous either in the pleading or otherwise could pass a judgment upon admission in terms of the provisions of Order XII, Rule 6 of the Code of Civil Procedure, the same is quoted below:

“6. Judgement on admissions.- (1)

Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

After filing of this revisional application, C.O.1206 of 2020 was disposed of by this Court by which the same order impugned to this revisional application was upheld on contest between the parties. In the said proceeding submissions were made on behalf of the petitioner that the dispute involved in the suit related to construction of a deed of settlement and the dispute could not be adjudicated at the stage of hearing of an application under Order VII, Rule 11 of the Code of Civil Procedure, but the issues should be adjudicated upon.

Upon hearing the learned advocates for the respective parties, this Court upheld the order impugned to this revisional application. It was categorically stated that interpretation of the deed of settlement would be made at

the trial and hearing of the suit. The relevant portion is quoted below:

“On hearing learned counsel for the parties, this Court is of the view that the dispute admittedly involves construction of the Deed of Settlement where the petitioner is the daughter of one of the sons of the settlor. The rejection of an application under Order 7, Rule 11 cannot stand in the way of a Court considering the import of the deed of settlement and intention of the settlor before it renders final judgment in the suit. The matter of construction of a deed which forms the central issue of an adjudication has to be gone into by a Court at the time of framing of issues, at the time of taking of evidence as well as at the time of final arguments. The judgment must also reflect the view of the learned Judge with regard to the construction of the deed in question,

This Court is therefore not inclined to interfere with the impugned order. The learned court below is directed to consider the issue with regard to interpretation of the Deed of Settlement during the course of hearing of the suit as well as at the stage of final arguments.

C.O. 1206 of 2020 and the connected application are disposed of in terms of the above.”

Subsequent to this order an application has been filed by the opposite parties praying for a judgment upon admission under Order XII, Rule 6 of the Code of Civil

Procedure. It is intimated to the court that the application under Order XII, Rule 6 of the Code of Civil Procedure is pending before the learned court below and the same has not yet been disposed of. Learned Advocate for the opposite party objects to such submissions and argues that there was no such admission as alleged and the dispute with regard to the deed of settlement has to be decided at the trial as directed by this court and even shares of the females would depend on such construction of the deed and could only be ascertained at the trial.

Without going into the merits of the claims and counter-claims of the parties and without going into the merits of the pleadings, this revisional application is disposed of directing the learned court below to hear out the application under Order XII, Rule 6 of the Code of Civil Procedure upon affording an opportunity of hearing to the parties as expeditiously as possible, preferably within a period of two months from the next date fixed.

It is made clear that the learned court below will proceed independently and in accordance with law.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)