

11.12.2020
Court No. 19
Item No.8
CP

C.O. 1539 of 2020

Sri Sakti Sengupta
vs.
Sri Pradip Kumar Ghosh & ors.

Ms. Smita Pal

....for the petitioner.

By this application, the petitioner has challenged the order dated January 14, 2020, passed by the learned Civil Judge (Junior Division), 1st Court at Serampore, Hooghly in Misc. Case No. 81 of 2016.

By the order impugned, the application under Order 18 Rule 17 of the Code of Civil Procedure for recalling of witness was turned down by the learned court on the ground that there was nothing on record to show that the documents sought to be proved and filed by recalling of the witness had any relevance or bearing on the proceedings under Order 9 Rule 13 which was merely a proceeding for setting aside ex parte decree. The learned court also observed that in the Misc. Case filed by the petitioner, there was no reference to any of the documents sought to be produced before the court and proved by recalling of witness.

Order 9 Rule 13 proceeding is a proceeding for setting aside an ex parte decree which the petitioner had suffered. Whether the petitioner was prevented

by sufficient cause from contesting the suit in which an ex parte decree was passed, will be primarily decided in the proceeding. The merits of the evidence with regard to the documents and Form 16 etc. shall not be adjudicated upon. Moreover, the evidence of the parties were over and written notes of arguments had already been filed. At this juncture, the learned court below after conclusion of the hearing exercised its discretion and held that the documents were not necessary for any clarification or for disposal of the application under Order 9 Rule 13 of the Code of Civil Procedure, specially because the facts sought to be incorporated by recalling the witness was never on record before the learned court below.

I do not find any reason to interfere with the order impugned. The order impugned is upheld.

The revisional application is dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)