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SK
Ct. No. 18
10.02.2021

**C.O. No. 228 of 2021
(Via Video Conference)**

**Shree Shree Iswar Satyanarayanji & Ors.
Vs.
Sarad Kumar Burman & Ors.**

With

C.O. No. 61 of 2021

**Shree Shree Iswar Satyanarayanji & Ors.
Vs.
Sarad Kumar Burman & Ors.**

Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Animesh Paul,
Ms. Fatima Hassan,
Ms. Shaloni Basu ... For the petitioners.

Mr. Partha Pratim Roy,
Mr. Ayan Kumar Boral,
Ms. Bishalaxmi Ghosh ... For the opposite parties.

Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Mr. Amit Chowdhury,
Ms. Sushmita Singh
... For the proposed added party Mr. Yogesh Gupta.

Affidavit of service filed in Court today be kept with
the record.

These two revisional applications under Article 227
of the Constitution of India are arising out of the suit
for eviction being Title Suit No. 152 of 2000 pending
before the 2nd Court of learned Civil Judge, (Senior
Division), at Howrah, as such taken up together for
disposal.

The plaintiffs are the petitioners of both the revisional applications. The defendants are contesting the suit with counter-claim.

The plaintiffs are seeking a judgment on admission on their application under Order XII Rule 6 of the Code of Civil Procedure filed on June 18, 2018.

This Court by an order dated December 10, 2019 passed in C.O. 4133 of 2019 requested the learned trial Judge to dispose of the said application under Order XII Rule 6 of the Code on the next date fixed and if for some unavoidable reasons the said application could not be disposed of on the said date the same was directed to dispose of within two weeks thereafter positively.

The petitioners in C.O. 61 of 2021 complain that in spite of the said earlier direction of this Court the said application has not yet been disposed of. The petitioners, therefore, by the aforesaid revisional application are seeking a further direction upon the learned trial Judge for immediate disposal of their application under Order XII Rule 6 of the Code.

The petitioners in C.O. 228 of 2021 are challenging the order dated January 19, 2021 passed in the said suit whereby the learned trial Judge has fixed consecutive dates for hearing of pending 28 applications under Order I Rule 10 (2) of the Code

along with the said application under Order XII Rule 6 of the Code.

The grievance of the petitioners is that the hearing of the application under Order XII Rule 6 cannot be tagged with the pending applications under Order I Rule 10(2) of the Code as the nature of the two applications are quite different and the application under Order XII Rule 6 is required to be disposed of first in view of the earlier direction of this Court.

There is a dispute with regard to the number of pending application under Order I Rule 10(2) of the Code as such this Court directed the petitioners to file a supplementary affidavit disclosing the exact number of the said pending applications.

Such supplementary affidavit has been filed today, which is taken on record.

On perusal of the said supplementary affidavit, it appears that on July 14, 2003 as many as 12 applications under Order I Rule 10 (2) of the Code were filed and thereafter on September 9, 2003 a separate set of six applications of same nature were filed.

There is a little bit of dispute between the parties as to the number of pending application as some of those applications alleged to have been disposed of.

Be that as it may, investigation to the said dispute is completely irrelevant to decide the present matters.

The pendency of the said numerous applications for addition of party has caused the imbroglio which needs to be removed.

The principles behind Order XII Rule 6 of the Code are to give the plaintiff a right to speedy judgment. The provision was amended by the amendment Act of 1976 of the Code.

To appreciate the scope of Order XII Rule 6 after the aforesaid amendment, it is appropriate to quote paragraph 39 of the decision of the Hon'ble Supreme Court in the case of **KARAM KAPAHI AND OTHERS VS. LAL CHAND PUBLIC CHARITABLE TRUST AND ANOTHER** reported in **(2010) 4 Supreme Court Cases 753:-**

“39. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it “ex debito justitiae”, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.”

The legal right of the plaintiffs to get a decree on admission cannot be put on halt for the disposal of the applications of third parties to the suit under

Order I Rule 10(2) of the Code as the said exercise runs counter to the object sought to be achieved by the said amendment of the said provision of the Code.

The learned trial Judge, therefore wholly misdirected himself in fixing the application under Order XII Rule 6 of the Code along with the applications under Order I Rule 10(2) of the Code.

Mr. Srijib Chakraborty, learned advocate seeks to intervene into the matter on behalf of one Yogesh Gupta one of the applicants of the pending applications for addition of party. Said Yogesh Gupta, not being a party to the suit has no right of hearing, however, for ends of justice this Court allows Mr. Chakraborty to advance his argument.

Mr. Chakraborty submits that in an earlier revisional application being C.O. 2437 of 2018 a co-ordinate Bench of this Court has directed the application filed by his client to be heard along with the application filed by the plaintiffs under Order XII Rule 6 of the Code. He, therefore, prays that the application filed by his client may be heard along with the application of the plaintiffs. He further submits that the hearing of the application filed by his client is going on before the learned trial Judge today and he undertakes on instruction that such hearing would be concluded today from the side of his client.

In view of the discussion made above the learned Trial Judge is directed to dispose of the application under Order XII Rule 6 of the Code filed by the petitioners within two weeks from the date of communication of this order notwithstanding pendency of any other applications on record excepting the application filed by Mr. Chakraborty's client Mr. Yogesh Gupta.

The time limit fixed for the disposal of the aforesaid two applications is peremptory and mandatory.

The order dated January 19, 2021 is modified to the extent indicated above.

It is made clear that this Court has not gone into the merit either of the application under Order XII Rule 6 of the Code or of the pending applications under Order I Rule 10(2) of the Code.

C.O. 61 of 2021 and C.O. 228 of 2021 are disposed of with the above terms.

No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)