

S/L 13
19.03.2021
Court. No. 19
GB

C.O. 313 of 2021

Sri Mrinal Kanti Giri
Vs.
Srimatya Aloka Giri & Anr.

(Through Video Conference)

Mr. Amit Baran Dash.

...for the Petitioner.

Mr. Mukteswar Maity.

...for the Opposite Party No.1.

This revisional application has been filed challenging an order dated January 20, 2021 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai, District – Purba Medinipur, by which the defence of the defendants to contest the suit, that is Title Suit No.83 of 2014 (on remand) has been struck off for non-payment of cost of Rs.1,000/-. Accordingly, the application under Order VI, Rule 17 of the Code of Civil Procedure was also rejected on the same ground.

It is submitted by Mr. Dash, learned advocate appearing on behalf of the petitioner/defendant that there was a miscommunication with the learned advocate, conducting the case and as such the cost could not be paid. For the inaction of the learned advocate, the litigant cannot suffer and he cannot be denied an opportunity to contest the suit.

Mr. Maity, learned advocate appearing on behalf of the opposite parties submits that the ploy of the defendant has always been to drag the suit and the defendant intentionally did not pay the cost. He submits that the defendant was never diligent in pursuing the suit and has shown certain documents in support of such contention.

The records reveal that the suit was fixed for argument after the same was remanded by the learned lower appellate court. It is true that the defendant took certain adjournments. However, taking into account the question of substantial justice, in my opinion, the defendant cannot be denied the last opportunity to contest his own suit and to move the application under Order VI, Rule 17 of the Code of Civil Procedure, which was rejected only on the ground that costs were not paid.

Under such circumstances, the order impugned is set aside. The learned court below shall hear out the application under Order VI, Rule 17 of the Code of Civil Procedure afresh within a period of one month from the next date fixed on its own merits and the defendant shall be allowed to contest the suit.

The defendant's application under Order VI, Rule 17 of the Code of Civil Procedure shall be taken up subject to payment of cost of Rs.2,000/- to the plaintiff by the next date fixed. Once the application under Order VI, Rule 17 of the Code of Civil Procedure is disposed of, the hearing of the suit shall be disposed of expeditiously, preferably within a

period of six months thereafter and no unnecessary adjournments shall be given to either of the parties.

This Court has not gone into the merits of the case and the learned court below shall decide the matter in accordance with law.

The revisional application is disposed of.

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

(Shampa Sarkar, J.)