

(09)
23.02.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 406 of 2021

Sri Moloy Mukherjee

-versus-

Smt. Madhushree Biswas

Mr. Haradhan Banerjee,
Mr. Amar Nath Das,
Ms. Jhilic Das,

... for the petitioner.

Mr. Abhijit Roy,

... for the opposite party.

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

This revisional application under Article 227 of the
Constitution of India is at the instance of the defendant in a
suit for eviction and is directed against the order no. 53 dated
February 18, 2021 passed by the Learned Judge, 4th Bench,
Small Causes Court, Calcutta in Ejectment Suit No. 5 of 2013.

January 28, 2021 was a date fixed in the said suit for
cross-examination of P.W. 1 but the petitioner was absent on
the said date as such the learned Trial Judge fixed February
18, 2021 for ex parte hearing of the said suit.

The petitioner filed an application for recalling of the
said order dated January 28, 2021 on the ground that due to
the outbreak of Covid-19 pandemic the learned lawyer of the
petitioner and his clerk could not keep proper track with the

dates of the suit and due to mistake in noting the date he could not participate in the hearing of the suit fixed on January 28, 2021.

The learned Trial Judge by the order impugned has dismissed the said application holding that the intention of the defendant is only to drag the suit and in view of the direction of this Court passed in C.O. 843 of 2020 dated March 11, 2020 to dispose of the suit within six months the prayer of the petitioner cannot be allowed.

Having heard the learned counsel for the parties and on perusal of the record it appears that this Court on March 11, 2020 passed the following direction in CO 843 of 2020 :-

“On perusal of the order dated January 20, 2020 it appears that the Learned Trial Judge has fixed March 17, 2020 as the date for further cross-examination of the P.W.- 1; in default, closure of the evidence of the said witness.

The Learned Trial Judge is requested to proceed with the hearing of the said suit strictly in terms of his aforesaid order without entertaining prayer for adjournment of either of the parties.

In view of the age of the suit the learned Trial Judge is requested to make all endeavour to dispose of the said suit within a period of six months from the date of communication of this order”.

This Court appreciates the buoyancy of the learned Trial Judge in implementing the aforesaid direction of this Court but this Court cannot be oblivious to the situation developed from third week of March, 2020 due to the

outbreak of Covid-19 pandemic for which the normal functioning of all Courts throughout the nation was disrupted.

The proceeding of the suit could not escape the effect of the said situation and the restrictive measures taken to combat the pandemic obviously put a constraint in the normal movement of the lawyers, parties and of all concerned. Therefore, it is not unlikely that the lawyer of the petitioner and his clerk had committed a mistake in keeping track with the dates fixed in the suit.

The petitioner under such circumstances is entitled to a relief.

The order impugned for the aforesaid reasons is set aside only to give a chance to the petitioner to contest the suit but diligently.

The suit be taken off from the ex parte board. It is informed by the learned counsel for the parties that tomorrow (i.e. 24.02. 2021) is the date fixed in the said suit for argument.

Mr. Abhijit Roy, learned counsel for the opposite party, submits that the P.W. 1 will make himself available for the cross-examination tomorrow.

The learned Trial Judge shall afford an opportunity to the petitioner to conclude cross-examination of the P.W. 1 by tomorrow.

The learned Trial Judge thereafter shall fix another date convenient to him for the cross-examination of P.W. 2

and the petitioner shall conclude the cross-examination of the said witness on the date so fixed.

The learned trial Judge is requested to dispose of the said suit after the completion of the witness action in accordance with law keeping in view of the earlier direction passed by this Court in CO 843 of 2020.

C.O. 406 of 2021 is disposed of with the above terms.
There shall be no order as to costs.

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

(Biswajit Basu, J.)