

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 740 OF 2018

SUBHASH DEB BARMAN
VS.
SIKHA GHOSH & ORS.

For the petitioner : Mr. Siva Prasad Ghosh.

For the opposite party nos. 1-3: Mr. Arnab Roy,
Mr. Satyam Mukherjee.

Heard on : 04.02.2021

Judgment on : 10.02.2021

Biswajit Basu, J.

1. The revisional application under Article 227 of the Constitution of India is directed against the Order No. 154 dated February 03, 2018 passed by the 4th Court of learned Civil Judge (Junior Division) Sealdah, District. 24 Parganas (North) in Miscellaneous Case No. 16 of 2005 arising out of Title Suit No. 501 of 1989.

2. The predecessor-in-interest of the petitioner and the opposite party nos. 7, 8, 9 and 10 filed a suit for eviction being Title Suit No. 501 of 1989 in the 4th Court of learned Civil Judge (Junior Division) Sealdah, District. 24 Parganas (North) against the predecessor-in-interest of opposite party nos. 4, 5 and 6.

3. In the said suit one Anjali Ghosh, the predecessor-in-interest of the opposite party nos. 1, 2 and 3 filed an application under Order I Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for being added as defendant. The learned Trial Judge by an order dated February 12, 1999 allowed the said application thereby adding the said Anjali Ghosh as the second defendant in the said suit.

4. The predecessor-in-interest of the petitioner assailed the said order in revision under Section 115 of the Code of Civil Procedure being C.O. 1136 of 1999 and by an ad-interim order passed in the said revisional application, all further proceedings of the said suit was stayed till the disposal of the said revisional application. The said revisional application, however, was dismissed on contest on February 27, 2004. The hearing of the said suit resumed thereafter but the defendants did not appear to contest, as a result, on January 27, 2005 the suit was decreed ex parte.

5. The said defendant no. 2, the predecessor-in-interest of the opposite party nos. 1, 2 and 3 herein on May 18, 2005 filed an application under Order IX Rule 13 of the Code for setting aside the said ex parte decree contending that after resumption of the hearing of the said suit no notice was served either

upon him or upon his lawyer, only upon enquiry on May 12, 2005 he came to learn that the suit has already been decreed ex-parte and thereafter he filed the said application for setting aside the ex-parte decree. The said application was registered before the learned Trial Judge as Miscellaneous Case No. 16 of 2005. The plaintiff (since deceased) contested the said misc. case alleging that after the resumption of the hearing of the said suit the defendants intentionally did not appear in spite of knowledge.

6. The learned Trial Judge by the order impugned has allowed the said misc. case thereby restored the suit to its original file and number after setting aside the said ex-parte decree on the ground that after resumption of the hearing of the suit no notice was served either upon the defendant no. 2 or upon his learned advocate.

7. Mr. Siva Prasad Ghosh learned advocate appearing on behalf of the petitioner submits that after dismissal of the said revisional application, further proceedings of the Title suit resumed on April 17, 2004 but the defendant no. 2 although contested the revisional application before the High Court yet chose not to appear in the suit after its resumption, the learned Trial Judge after waiting almost one year on January 27, 2005 decreed the said suit ex parte which signifies negligence of the defendant no. 2 for which he is not entitled to the relief sought for.

He further submits that the opposite party no. 2, the son of the defendant no. 2 deposed as P.W. 1 in the said misc. case and in his cross-

examination he admitted that he met his learned advocate on January 27, 2005 i.e. the date when the suit was decreed ex parte which clearly indicates the knowledge of the said defendant about the further proceeding of the said suit.

8. Mr. Ghosh submits that the defendant no. 2 contested the said revisional application and was aware that the further proceeding of the suit would resume after dismissal of the said revisional application but remained inactive, as such, he cannot succeed in his application for setting aside the ex parte decree only on the plea that he was not notified either by the Court or by the plaintiff after resumption of the further proceeding of the suit as the 'sufficient cause' contemplated under Order IX Rule 13 of the Code must be scrutinized from the viewpoint of reasonable standard of a cautious man. Mr. Ghosh in support of his such contention places reliance on the decision of the Hon'ble Supreme Court in the case of **PARIMAL VS. VEENA** reported in **(2011) 3 SCC 545**.

9. Mr. Arnab Roy learned advocate appearing on behalf of the opposite party nos. 1, 2 and 3 on the other hand submits that no doubt the defendant no. 2, the predecessor-in-interest of his clients contested the said revisional application and he was aware that the further proceeding of the suit would resume after dismissal of the said matter but in terms of Rule 370(2) of the Calcutta High Court Civil Rules and Orders, after remand of a case the Court shall inform the lawyers of the parties regarding important orders but in the

present case no such notice was given either to the defendant no. 2 or to his lawyer, as a result, the defendant no. 2 was prevented from appearing before the Court when the said ex parte decree was passed.

10. Mr. Roy in support of his aforesaid submission places reliance on the Division Bench decision of this Court in the case of **OIL AND NATURAL GAS COMMISSION VS. TRIDIB NATH SANYAL & ORS.** reported in **AIR 1983 Calcutta 124**. He also places reliance on the decision of the Hon'ble Supreme Court in the case of **TALA S/O CHHANGA VS. SATYAWAN & ANR.** reported in **(2004) 13 SCC 18** to contend that after the resumption of the further proceeding of the suit upon dismissal of the said revisional application the defendant no. 2 was required to be notified by the Trial Court.

11. Mr. Roy further submits that apart from the non-service of aforesaid notice, the plaint was not amended after addition of defendant no. 2 as required under Order I Rule 10(4) of the Code and no summons was served upon the defendant no. 2 as required under sub-rule (5) thereof, therefore, according to him, there were serious irregularities in commencement of the further hearing of the said suit which alone is sufficient to set aside the said ex-parte decree.

Heard learned advocate for the parties, perused the materials on record.

12. The suit was filed way back in the year 1989 under Section 13 of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the 'said Act of 1956') seeking eviction of the defendant no. 1 from the suit property on

the grounds of default in payment of rent and the plaintiff's requirement of the suit premises for own use and occupation. The defendant no. 1 appeared in the suit and filed an application under Section 17(2) of the said Act of 1956 and at this stage the said Anjali Ghosh (since deceased) prayed for his addition in the said suit as defendant no. 2 and his such prayer was allowed by the learned Trial Judge. The further proceeding of the suit was stayed by an order passed in the revisional application challenging the order of addition of said Anjali Ghosh in the suit. The revisional application ultimately was dismissed on February 27, 2004 with a direction upon the learned Trial Judge to proceed with the said suit expeditiously and to decide it preferably within six months from the date of communication of the said order. The defendant no. 2 was well aware of the said direction of the High Court.

13. It appears from the record that the learned Trial Judge in his Order No. 64 dated on April 17, 2004 records the receipt of the copy of the said order of the High Court passed in the said revisional application and fixed May 14, 2004 for hearing of the application under Section 17(2) of the said Act of 1956 filed by the defendant no. 1 but the said defendant did not appear on the dates fixed for hearing of the said application, as a result the learned Trial Judge ultimately, by the Order No. 71 dated July 17, 2004 disposed of the said application ex parte.

14. It is therefore apparent from the records that after the resumption of the further proceeding the learned Trial Judge fixed consecutive dates in the said

suit but the defendants did not appear. In the backdrop of such position evident from the record, it is hardly believable that the defendant no. 2 after dismissal of the said revisional application went to Sealdah Court for four/five occasions to enquire about the date of the said suit but his lawyer could not give him any affirmative answer as claimed by the opposite party no. 1 in his evidence as P.W. 1 in the said misc. case.

15. The Hon'ble Supreme Court in the case reported in **(2011)3 SCC 545(supra)** relied on by Mr. Ghosh has held that sufficient cause is to be examined from the viewpoint of reasonable standard of a cautious man. Sufficient cause means that party has not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been not acting diligently or remaining inactive. Paragraph 13 of the said report being relevant to the context is quoted below:

“Sufficient cause” is an expression which has been used in a large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been “not acting diligently” or “remaining inactive”.(emphasis supplied) However, the facts and circumstances of

each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

16. The learned Trial Judge decreed the said suit ex-parte almost one year after dismissal of the said revisional application. The explanation sought to be offered by the defendant no. 2 for his non-appearance on the relevant date gets a jolt raising a question as to the bona fide of the defendant no. 2 when the record demonstrates his total inertness in taking steps in the suit after commencement of its hearing upon dismissal of the said revisional application.

17. Let me now consider whether Rule 370(2) of Calcutta High Court Civil Rules and Orders mandates service of notice to the lawyers of the parties in every case of remand. Note 1 appended to Rule 370(2) of the said Rules and Orders provides that every endeavor should be made to get the signature of the pleaders concerned to the important orders, their attention is required to be drawn to the fact but the said Note also provides that it is not the duty of the Court to call upon the pleaders to sign the orders issued or to inform them of the orders passed. It is for the pleaders present at the proceedings to make them acquainted with the orders passed.

The said Note 1 to Rule 370(2) of the Calcutta High Court Civil Rules and Orders is quoted below for ready reference:-

“1. While every endeavour should be made to get the signature of the pleaders concerned to important orders, their attention is drawn to the fact that it is not duty of the Court to call upon the pleaders to

sign the orders issued or to inform them of the orders passed. It is for the pleaders to be present at the proceedings to make themselves acquainted with the order passed.”(emphasis supplied)

18. The Division Bench of this Court in the case reported in **AIR 1983 Calcutta 124 (supra)** relied on by Mr. Roy after taking the said Note into consideration has opined that it would be prudent to inform at least the lawyer who had represented the parties in the said Court before remand. Paragraph 7 of the said report being relevant is quoted below:

“7.Thus R. 370 (2) of the Civil Rules and Orders does not provide that in every case the Court should inform the parties or their lawyers about important orders passed by it(emphasis supplied) but at the same time when after remand a case is set down before the Court, it would be prudent to inform at least the lawyers who had represented the parties in the said Court before such remand. This may assist the Court in expeditiously disposing of the case after giving opportunities to the parties and also might prevent a non-appearing party from later raising a plea that it had been prevented by sufficient cause from appearing at the hearing of the matter.”

19. The defendant no. 2 being totally inactive for almost one year after the resumption of the further hearing of the said suit cannot succeed in his application for setting aside the ex-parte decree only on the plea that the notice of resumption of the further proceeding of the said suit was not served either upon him or upon his lawyer particularly when the order of the High Court on the basis of which the resumption of further hearing of the suit was occasioned was admittedly within the knowledge of the defendant no. 2.

20. The irregularities in fixing the said suit for further hearing after dismissal of the said revisional application needs to be addressed. Order I Rule 10(4) of the Code prescribes the procedure for amendment of the plaint after the addition of a party in a suit and service of copy of the amended plaint upon the added party, any irregularity in complying with such procedure will not constitute a sufficient cause for non-appearance of such added party in the further proceeding of the suit especially when such added party appears to contest the suit of his own motion. The said objection is too technical and is overruled.

21. The Order I Rule 10(5) of the Code suggests the date of commencement of the proceeding against the added party for the purpose of reckoning limitation against the added party. The investigation in the present matter is to the sufficiency of cause shown by the defendant no. 2 for his non-appearance before the Court when the suit was called on for ex-parte hearing as such the aforesaid provision of the Code has no manner of application in the present case. The argument of Mr. Roy, therefore, also fails on this score.

22. The decision of the Hon'ble Supreme Court relied on by Mr. Roy in the case reported in **(2004) 13 SCC 18(supra)** is no pointer to the issue involved in the present revisional application inasmuch as in the said case before the Hon'ble Supreme Court after transfer of the case to a different Court, no notice was issued to the defendant no. 1 as a result the said defendant was in complete dark about the proceeding before the transferee Court. The Hon'ble

Supreme Court in the context of the said case held that notice regarding transfer of a case from one Court to another Court should be given to the parties. This is not the case here.

The order impugned for the aforesaid reasons, is not sustainable and is accordingly set aside. Misc. case no. 16 of 2005 is dismissed and Order no. 76 dated January 27, 2005 whereby the Title Suit No. 501 of 1989 has been decreed ex-parte is restored.

C.O. 740 of 2018 succeeds. No order as to costs.

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

(BISWAJIT BASU, J.)