

S/L 77
10.03.2021
Court. No. 19
GB

C.O. 1030 of 2020

Smt. Tapati Bhaduri & Ors.
Vs.
Sri Manotosh Ray & Ors.

(Through Video Conference)

Mr. Subrata Goswami,
Mr. Sourav Sen.

...for the Petitioners.

Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee.

...for the Opposite Parties.

This revisional application has been filed against an order dated February 7, 2020 passed by the learned Civil Judge (Junior Division) at Nabadwip, District Nadia in Misc. Case No.58 of 2018 arising out of Title Suit No.207 of 2010.

By the order impugned the learned court below allowed an application under Order IX, Rule 13 of the Code of Civil Procedure upon payment of cost of Rs.2,000/-.

It is on record that the defendant could not file the written statement on time and liberty was granted to the defendant to cross-examine the plaintiff. As the defendant failed to appear before the learned court below on the date fixed for cross-examination, the suit was decreed *ex parte*. It appears from the record that the learned court below considering the fact that there was no endorsement on the order sheet as to the date on which cross-examination would be held, allowed the application under Order IX, Rule 13 of

the Code of Civil Procedure thereby setting aside the *ex parte* decree. The defendant was directed to pay cost of Rs.2,000/-.

I do not find any reason to interfere with the order impugned because the learned court below has exercised his jurisdiction and as rightly set aside the *ex parte* decree directing the defendant to pay cost of Rs.2,000/-.

In an adversarial form of litigation, a litigant cannot be deprived of his right to contest the suit, especially when his right and title to a property is under a threat. If the cost has not yet been paid, the same shall be paid within two weeks from date.

The learned court below shall proceed with the hearing of the suit from the stage of cross-examination of the plaintiff.

In order to avoid further complications, the parties are directed to appear on April 5, 2021 before the learned court below so that dates may be fixed at short intervals and the suit may be disposed of at the earliest.

This Court has not gone into the merits of the case of the petitioner.

The learned court below shall satisfy itself about the payment of cost of Rs.2000/-.

The revisional application is disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)