

23rd July,
2021
(AK)
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C.O. 1156 of 2021

**Swapan Mondal
Vs.
Tata Motors Finance Solution Limited and another**

(Via video conference)

Mr. Supratik Sanyal
Mr. Gourab Ghosh
...For the Petitioner.

Ms. Anna Malhotra
Mr. Rishav Maity
...For the Opposite Party.

Affidavit-of-service filed in court today be kept on record.

Learned counsel appearing for the petitioner contends that the trial court acted without jurisdiction in dismissing the suit filed by the petitioner under Section 10(3) of the West Bengal Court Fees Act, for not putting in deficit court fees, without considering the reasons pleaded by the petitioner for the petitioner's prayer for further time to put in deficit court fees.

Learned counsel appearing for the opposite parties opposes the contentions of the petitioner and submits that the non-deposit of deficit court fees was sufficient ground for dismissal of the suit.

Upon perusal of the impugned order, it appears that the trial court did not even advert to the grounds

made out by the plaintiff/petitioner for late deposit of deficit court fees but dismissed the suit at the outset without granting the petitioner any opportunity of putting in the deficit court fees. As such, the impugned order was passed palpably without jurisdiction.

However, an order of remand to the trial court for re-consideration of the application upon looking into the grounds given by the petitioner for delayed payment of deficit court fees would unnecessarily drag the suit, which would be counter-productive against both the sides.

Accordingly, C.O. 1156 of 2021 is allowed, thereby setting aside the impugned order being Order No.2 dated March 3, 2021 passed by the Civil Judge (Senior Division) at Kakdwip, District-South 24 Parganas in Money Suit No.05 of 2020 and permitting the petitioner to deposit the deficit court fees within a fortnight from date in the court below.

In default of such deposit, this order will automatically stand vacated without further reference to this court.

In the event such deposit is made, the trial court shall proceed with the hearing of the suit and make endeavour to dispose of the same as expeditiously as the business of the court permits.

The parties as well as the court below shall act on the written communication of the learned advocates for

the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)