

AD. 2.
July 29, 2021.
MNS.

C. O. No. 2510 of 2019
(Via video conference)

Somenath Mukherjee
Vs.
Sri Kusha Chandra Mohanty and another

Ms. Soma Kar Ghosh

... for the petitioner.

Affidavit-of-service filed in Court today be
taken on record.

It appears from the affidavit-of-service that
despite repeated attempts on the part of the
petitioner, the opposite parties could not be
served in view of the door of latter's residence
being locked every time.

Learned counsel appearing for the
petitioner submits that the petitioner is an
octogenarian and is suffering from serious
ailments.

It is further pointed out from the records
that, vide order no. 12 dated September 11,
2018, the trial court specifically observed that the
defendants were aware of the case and observed
the case without participating in the hearing.

On such finding, as well as upon recording that the defendants wanted to take a chance to hamper the case without filing written statement, the matter was fixed by the trial court on October 3, 2018 for *ex parte* arguments.

Thereafter, upon an order being passed in a revisional application by this Court, the petitioner took out a modification application, which was dismissed by the trial court.

It is evident that the opposite parties have evaded service all through, both in connection with the suit as well as the revisional application, which is evident from the materials on record as well as the affidavit-of-service filed today.

However, while disposing of the modification application for the plaintiff-petitioner the trial Judge, vide order no. 21 dated April 17, 2019, directed the plaintiff to serve a copy of the plaint along with all annexures positively within the next date. On the face of it, such order was passed beyond the jurisdiction of the trial court since the same tantamounted to recalling its earlier order, which had attained finality. The matter being already on the *ex parte* board since three years back, the trial Judge acted patently without jurisdiction in directing the petitioner to

serve further copies of the plaint on the defendants.

Accordingly, C. O. No. 2510 of 2019 is disposed of by setting aside the portion of the impugned order directing further service of notice. The Civil Judge(Junior Division), Fourth Court, Alipore, District- South 24 Parganas, shall dispose of Ejectment Suit No. 248 of 2017, pending in the said court, *ex parte* without directing any further notice to be given to the defendants, since all modes of substituted service have already been exhausted long back. The trial Judge is requested to dispose of the suit itself, keeping in view the implicit urgency in the suit and the advance years of the petitioner, as expeditiously as possible, positively within four months from the date of communication of this order to the court below.

The petitioner shall communicate this order, along with a server copy of this order, to the court below, at the earliest.

The trial court as well as the opposite parties shall act on the written communication of the learned advocate for the petitioner accompanied by a server copy of this order,

without insisting upon prior production of the certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)