

05
20.12.2021
Ct. 21
AB

C.O. 1992 of 2021
(Via Video Conference)

Sri Biswanath Dey & Ors
-Vs-
Sri Prabir Kumar Ghosh & Ors.

Mr. Ayan Banerjee,
Ms. Debjani Sengupta,

... for the petitioners

Mr. Sibnath Ganguly,

...for the opposite parties

Assailing the order of refusal to vacate Title Suit No. 421 of 1992 from the ex-parte hearing by learned Civil Judge (Junior Division) 1st Court, Sealdah, the defendants/petitioners have filed this application under Article 227 of the Constitution of India.

Perused the impugned order dated 04.10.2021 and the copy of the order sheets of the lower Court record dated from 26.02.2014 till the date of passing of the impugned order. From where it is seen the plaintiffs/opposite parties have filed Title Suit No. 421 of 1992 against the defendants/petitioners for their eviction under the West Bengal Premises Tenancy Act, 1956. In such suit the defendants had appeared and filed an application under Section 17 (2) of the W.B.P.T.

Act, 1956 and the same stands rejected being not moved on 13.04.2021.

It is seen from the order sheets defendants were very irregular in conducting the case in the Court below. Pendency of an application under Section 17 (2) of the W.B.P.T. Act, 1956 till 13.04.2021, itself prove the defendants/tenants who are facing eviction from the tenanted premises were very reluctant to get their application heard and appears to have kept it alive for more than 20 years and thereby caused delay in disposal of eviction suit.

The impugned order dated 13.04.2021 also shows on that day defendants were absent without any step. After rejection of the petition under Section 17 (2) of Act of 1956, for being not moved, then case was fixed for hearing amendment petition and as well for ex-parte hearing on 30.04.2021. In that manner the case has adjourned till 04.10.2010.

That on 04.10.2021 the defendants had put their appearance and filed a petition praying for vacating the order of ex-parte hearing of the case against them on the plea due to pandemic they could not take any step and was unaware of the status of the case.

From the impugned order it is seen the Court had issued summons upon defendants on 19.02.2020 on the basis of an order passed on 20.01.2020 and which were received by them on 29.02.2020 as it bears

signature of defendant no. 2. Then case was fixed for appearance of the defendants on 06.03.2020 but they have failed to appear till 04.10.2021.

The recording in order sheets of lower Court prima facie show the defendants were not diligent in conducting the case. Rather it is seen the defendants were very irregular in their attendance before the Court and somehow they managed to keep their application under Section 17(2) of W.B.P.T. Act, 1956 alive for more than 20 years, consequently the suit too could not proceed further. Keeping in view such conduct of the defendants this Court does not find any irregularity or illegality in the impugned order rejecting the application of the defendants for vacating the suit from ex-parte hearing. Further, this Court is of view entertaining the application of the defendants would tantamount to giving indulgence to the defendants and delay the disposal of the case which has been filed 29 years ago. This Court does not find any merit in the present application under Article 227 of the Constitution of India.

Accordingly **C.O. 1992 of 2021 is dismissed.**
Connected applications are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

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

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(**Kesang Doma Bhutia, J.**)