

8.9.2022
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Ct. no. 652
sb

**C.O. 2120 of 2021
With
CAN 1 Of 2022**

Chowdhury Mosammat Nurehar Begam & Anr.

Vs.

Md. Mohobub Hossain & Ors.

Mr. Avik Dutta
Mr. Syed Julsikar Ali ...for the petitioners

In Re: CAN 1 of 2022

This is an application for recalling or modification of the order dated 22.12.2021 passed in C.O. 2120 of 2021. This court disposed of the case on 22.12.2021 with the observation that the defendants have failed to comply the order dated 6.2.2016 till 4.3.2020 and as such the court below was compelled to vacate the order dated 6.2.2016, then the defendant nos. 1 & 2 put their appearance long after 4 years, on 5.3.2021 and prayed for vacating ex parte hearing of the case which was disallowed by passing impugned order. This court further held that prima facie it shows that the petitioners do not have regard to the order of the court and they were asked to pay cost of Rs. 500/- while accepting written statement filed by them at a belated stage on

6.2.2016. Considering the conduct of the defendant nos. 1 & 2, that they want to prolong the case and want to obstruct the plaintiff from proceeding further with the hearing of the case, C.O. 2120 of 2021 was dismissed as this court did not find any illegality or irregularity in the impugned order passed by the court below.

The background, which prompted the petitioner to file the civil revisional application, is that opposite party no. 1 filed a suit for negative declaration and permanent injunction along with an application for injunction. On 6.2.2016, the written statement of the petitioner no. 2 was accepted subject to payment of cost of Rs. 500/-. On 15.12.2018 vide order no. 26, the suit was posted for ex parte hearing against defendant no. 4 and last opportunity was given to the petitioner no. 2 to pay cost of Rs. 500/-. On 4.3.2020, the written statement of the petitioner no. 2 was not taken into the record as cost was not paid and written statement filed by petitioner no. 2 was rejected and it was ordered that the suit would be heard ex parte against the petitioner nos. 1 and 2. On 27.11.2020, the petitioner nos. 1 and 2 filed an application with the prayer to set aside the ex parte hearing on the ground that the petitioner no. 1 was under complete bed rest and the petitioner no. 2, the retired Government employee has to look after his ailing wife and as such could not take step in time and as such prayed for vacating the ex parte order but the learned

court below vide impugned order dated 5.3.2021 was pleased to reject the prayer for vacating ex parte order.

In the present prayer for recalling application, the petitioner has prayed that one more opportunity may kindly be given to the petitioner by accepting their written statement after vacating exparte order so that they can contest and the suit may be disposed of on merit. He further submits that technicalities should not be an impediment for justice.

In view of above, having considered the facts and circumstances of the case, the order passed by this court vide order dated 22.12.2021 in C.O. 2120 of 2021 is hereby recalled. Accordingly, C.O. 2120 of 2021 is hereby disposed of with the following observations:

The written statement filed by defendant nos. 1 and 2 will be accepted after vacating expert order on condition of payment of Rs. 10000/- to the District Legal Service Authority within three weeks from the date of the communication of this order. On submission of proper receipt, the learned court below will accept the written statement filed by the defendant nos. 1 and 2 after vacating exparte order and will frame issue accordingly. The order no. 7 dated 5.3.2021 is accordingly stands modified/set aside to that extent. However in case of failure of payment of cost as above within the stipulated period by the defendant nos. 1 and

2, learned trial court will be at liberty to proceed ex parte against the defendant nos.1 and 2.

Accordingly, CAN 1 of 2022 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)