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C.O. 3721 of 2019

Smt. Bimala Mondal @ Bimala Guha (Patra) & Anr
Versus
Kamal Patra & Ors

(Via Video conference)

Ms. Suchorita Roy,
... For the Petitioners.

Ms. Juin Dutta Chakraborty,
... For the Opposite Party Nos. 1 and 4.

The impugned order dated 8th August, 2019 passed by learned Civil Judge (Senior Division), Basirhat in Title Suit No. 120 of 2018 vacating the ex parte hearing of the suit after accepting the show cause with a cost of Rs. 50/- is subject of challenge in this revisional application.

Ms. Suchorita Roy, learned advocate for the petitioners submits that the show cause application for vacating the ex parte hearing was filed with a delay of 365 days. It is submitted by the learned advocate for the petitioners that this is a suit for partition and for not responding to the summons, even after receiving the same, the Court found no other alternative, but to fix the suit for ex parte hearing on 25th January, 2019. The partition suit was admittedly instituted in the year 2018. Subsequently, two Pws were examined and argument was concluded fixing 25th July, 2019 for passing necessary order. On that date suddenly defendant No. 1 woke up and appeared before this Court with a show cause petition praying for vacating the ex parte hearing of the suit.

Learned advocate for the petitioners adverting to Order VIII Rule 1 of Code of Civil Procedure submits that such belated acceptance of written statement, even after being supported by show cause, is against the spirit of law and there has been flagrant violation of justice, which must be taken into account.

According to the petitioners, the written statement supposed to be filed by the defendants, could not be filed within the time after adhering to the provisions of law incorporated under Order VIII Rule 1 of CPC.

Learned advocate representing opposite party Nos. 1 and 4 submits that it is true that it was a belated filing of show cause for vacating, but there are reasons in support thereof, which prompted the defendants to vacate the ex parte hearing belatedly. Reasons for causing delay, according to opposite parties, have been specifically mentioned in the show cause petition. It is further submitted by the learned advocate for the opposite parties that since it is a partition suit, the right to contest must be given, otherwise not a single co-sharer would be quite free to enjoy his respective share in an uninterrupted manner without any hindrance.

The situation as it stands is very clear that order fixing suit for ex parte hearing has been vacated upon receiving a show cause filed by the defendant, and that too at a belated stage with a cost of Rs.50/- payable to DLSA. No specific reasons appears to have been assigned by the learned court below, as is required to be made in strict obedience to the direction contained in Order VIII Rule 1 of C.P.C. However, when the very nature of the suit is for partition and for other

consequential reliefs, the Court is of the view that without going into the details, let a chance to contest the suit be given to the contesting defendant, who already appeared in the case upon filing their respective show cause, and thereafter the ex parte hearing of the suit has already been vacated, so far as contesting defendants are concerned.

But as regards the cost imposed, it is not sufficient enough to adequately compensate the petitioner/plaintiffs so far as the harassment and undue hardship already caused, or suffered by the petitioners since 2018.

Such belated filing of show cause with a prayer for vacating the ex parte hearing is nothing, but to cause undue delay in the disposal of the partition suit favourable to the ultimate purpose of the contesting defendants.

Having considered the submission of both sides, the impugned order dated 08.08.2019 passed by learned Civil Judge (Senior Division), Basirhat is modified to the extent mentioned hereinbelow:

The contesting defendant/O.P Nos. 1 and 4 are directed to deposit Rs.4000/- as costs to petitioners/plaintiffs within a fortnight failing which this order shall automatically stand vacated without making any reference to this Court.

The other portion of the impugned order will ,however, remain unaltered. The order is modified to that extent only.

Upon considering the delay caused in the proceeding, learned court below is directed to dispose of the suit expeditiously as possible providing sufficient opportunity of hearing to either of the parties to this case, without granting

unnecessary adjournment, unless it is extremely unavoidable.

Since the delay caused is purely attributable to the conduct of the contesting defendants petitioners/plaintiffs need not to file any show cause, as contained in the impugned order.

With these directions and observations the revisional application is disposed of.

(Subhasis Dasgupta, J)