

(21)
27.01.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO 4042 of 2019

**Smt. Indrani Sensarma
-versus-
Bhaskar Sen**

Mr. Debajyoti Basu,
Mr. Subhojit Seal,
Ms. Reshmi Mukherjee, ... for the petitioner.

Mr. Manojit Bhattacharya,
Mr. Rajarshi Basu, ... for the opposite party.

Affidavit of service filed on behalf of the petitioner in
Court today be kept with the record.

This revisional application under Article 227 of the
Constitution of India is at the instance of plaintiff in a suit for
ejectment and is directed against the order no. 36 dated
November 27, 2019 passed by the Learned Judge, Second
Bench, City Civil Court at Calcutta in Title Suit No. 831 of
2017.

The connected suit was once decreed ex parte. The
defendant/opposite party took out an application under Order IX
Rule 13 of the Code of Civil Procedure for setting aside the said
ex parte decree which was registered before the Learned Trial
Judge as Misc. Case No. 467 of 2018.

The petitioner aggrieved by an order of stay of the said
ex parte decree of eviction passed in the said misc. case,
preferred a revisional application being C.O. 1229 of 2019. In

the said revisional application the said ex parte decree was set aside on the consent of the petitioner and the suit was restored to its original file and number.

The opposite party after restoration is contesting the said suit with a counterclaim. The petitioner is defending the said counterclaim with a written statement. The learned Trial Judge by the order impugned has rejected an application filed by the opposite party under Order XXXIX Rule 7 of the Code for holding local inspection of the suit property.

The learned Trial Judge by the said order has also rejected the prayer of the petitioner to file additional evidence-in-chief under Order XVIII Rule 4 of the Code in respect of her written statement to the counterclaim and observed that the evidence-in-chief filed by the petitioner is treated as fresh evidence and the documents already marked Exhibit Nos. 1 to 8.

The learned Trial Judge by the said order afforded opportunity to the opposite party to file written objection to the written statement filed by the petitioner against the counterclaim of the opposite party.

Mr. Debajyoti Basu learned advocate for the petitioner submits that the plaintiff adduced evidence when the suit was heard ex parte and after setting aside of the said decree the plaintiff is entitled to give further evidence as the suit is now proceeding on contest.

I find substance in the submission of Mr. Basu. The trial of the suit after setting aside the ex parte decree shall commence from the stage it reached prior to the date when the said suit was fixed for ex parte hearing.

The plaintiff must get the opportunity to adduce further evidence as the suit is now proceeding with a written statement on record, further more when there is a written statement to the counterclaim of the defendant.

The evidence-in-chief of the plaintiff recorded in course of the ex parte hearing of the suit and the documentary evidences proved during the said period form part of the record and have not been wiped out after setting aside the ex parte decree.

The learned Trial Judge, therefore, has committed a jurisdictional error by not permitting the petitioner to adduce further evidence.

There is no scope in a civil suit to file written objection against the written statement. The learned Trial Judge, therefore, is not justified in giving opportunity to the defendant to file written objection to the written statement of the plaintiff against the counterclaim.

The order impugned excepting the portion whereby the application filed by the defendant for local inspection has been rejected is not sustainable for the aforesaid reason and is accordingly set aside.

C.O. 4042 of 2019 succeeds. No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)