

June 23, 2022
Sl. No.13
Court No.8
s.biswas

FA 162 of 2012
Rabi Lochan Addya
vs.
Gokul Rajak

The appellant is not represented, nor any accommodation has been prayed for on behalf of the appellant.

From the record it would reveal that since May, 2018 the appellant is not represented, even in spite of earlier peremptory direction passed with regard to hearing of the appeal, failure to appear on the date fixed, may result in dismissal of the appeal for default is ignored.

On 15th June, 2022 after taking into consideration past conduct of the appellant, we directed this appeal to be listed on 22nd June, 2022 and we observed that if in the event the appellant is not represented on the adjourned date, it shall be presumed that the appellant is not interested to proceed with the matter and the appeal may be dismissed for default.

We propose to decide the matter on the basis of Lower Court Record and paper-book filed.

The appeal is arising out of the judgment and order dismissing the suit for specific performance of contract. The appellant has failed to aver and prove that he has performed his part of the obligation. The appellant has failed to establish his case by adducing sufficient and

cogent evidence. The appellant has failed to prove his readiness and willingness to perform his obligation as required under the alleged agreement. This has been elaborately discussed by the learned Trial Judge in Sub-paragraphs (i) to (vii) of the impugned judgment appearing at internal pages Nos.35 to 37 of the said judgment. The said evidence are based on the available record and clearly disentitles a discretionary relief to the appellant. On the basis of said evidence, we do not find any reason to come to a different conclusion.

The appeal stands dismissed.

No order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)