

S/L No.55
25.03.2022
Ct-29
(Kc & AD)

CO 132 of 2022

Mool Chand Agarwal & Ors.
vs.
Tapan Kumar Ghosh

Mr. Om Nayaran Rai
Mr. Badal Singh

...for the petitioners.

Mr. Vinay Kumar Purohit

... for the opposite party.

Affidavit of service filed in Court be kept with the record.

Learned advocates appearing for the petitioners and the Opposite Party are present.

Heard both the sides.

By this application before this Court, the order dated December 18, 2021 passed by the learned Judge, 3rd Bench, Presidency Small Cause Court, Calcutta in connection with Ej Suit 534 of 2012 is challenged.

On careful perusal of the order dated December 18, 2021, I find that on that day was fixed for showing cause by the defendant. Both the learned advocates on behalf of the parties to the suit were present. Defendant filed show-cause stating, *inter alia*, that the petitioner could not take steps because of his absence on the earlier date, that is, on 10th August, 2021. Learned Judge did not accept the ground mentioned in the show-cause petition on the ground that all orders passed by the Court were uploaded

in CIS and any one can see the order even in the mobile phone.

Considering that aspect, the show-cause filed by the defendant was not accepted and suit was ordered to proceed ex parte against the defendant.

I have the privilege to have a look on the order dated August 10, 2021, copy of which has been filed on the record. From the order dated August 10, 2021, I find that the date was fixed for hearing of the application under Order 6 Rule 17 of the Code of Civil Procedure (CPC) and on that date, the defendant was found absent without taking steps and that is why learned Judge fixed date on December 18, 2021 for show-cause to the defendant as to why the suit shall not proceed ex parte against the defendant.

I failed to make me understand that how the date was fixed for ex parte hearing of the suit while the application under Order 6 Rule 17 CPC filed on behalf of the plaintiff was fixed for hearing on that date. In that case, the learned Court ought to have fixed a date for show-cause as to why the petition under Order 6 Rule 17 CPC shall not be heard ex parte.

However, considering all facts and circumstances, I find that the order passed on December 18, 2021 suffers from illegality and that being so, the order dated December 18, 2021 stands set aside.

The learned Judge is requested to afford an

opportunity of hearing to both the parties to the suit in the trial and to dispose of the suit as expeditiously as possible.

In view of the above order, the instant revisional application stands disposed of.

(Bibhas Ranjan De, J.)