

08.12.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.503 of 2022

**ROCK-FIELD PAJ REPLICATIONS PRIVATE
LIMITED**

Vs.

G S P PROJECTS PRIVATE LIMITED & ANR.

Mr. Rohit Das,
Ms. Kishwar Rahman,
Mr. Diptesh Ghorai

...for the petitioner

Ms. Noelle Banerjee,
Mr. Dipanjan Dey

...for the opposite party no.1

While assailing the order dated 3rd December, 2016, and 17th December, 2021, Mr. Rohit Das, learned advocate appearing for the petitioner submits that even after a suit was withdrawn, without any liberty to sue afresh, pursuant to the resolution of a dispute disclosed in the petition itself, filed by both the parties to this case, there cannot be any restoration of any suit in aid of Section 151 C.P.C., and that too without serving any notice upon the opposite parties.

It is further submitted by the learned advocate for the petitioner that a suit was filed against the petitioner praying for specific performance of contract, and the terms of the contract being agreed to be fulfilled, a petition was jointly filed by the parties to this case, so that suit may be allowed to be withdrawn.

Since the restoration of the suit was allowed behind the back of the petitioner, it is contended that having gathered knowledge of restoration of the suit, the petitioner filed an application for recalling the same in aid of an application under Section 151 C.P.C., and in the application filed by the petitioner, there has been specific endorsement, noted by the opposite party no.1/plaintiff, that plaintiff/opposite party no.1 had no objection, if the order mentioned hereinabove there by restoring the suit is set aside, but the court has not considered the same.

Even after no objection of the opposite party no.1, the court below declined to recall the order dated 3rd December, 2016, which according to petitioner has been erroneously decided, without truly adverting to the facts and circumstances presented.

Ms. Banerjee, learned advocate appearing for the opposite party no.1 submits that in an appropriate case being made out, there may be restoration of the suit for the ends of justice, and the same is permissible under Section 151 C.P.C.

It is further contended by the learned advocate for the opposite party no.1 that when there has been failure in ensuring compliance of the terms of the contract already entered into between the parties, subsequent to the withdrawal of the suit, the opposite party no.1/plaintiff had no other alternative, but to

secure justice upon revival of the suit in aid of Section 151 C.P.C.

Having considered the submission of both sides, it appears that fundamental thrust of this application is against violation of natural justice, for not issuing any notice, while making consideration of an application under Section 151 C.P.C., thereby getting the suit restored, allegedly behind the back of the opposite party no.1.

Upon perusal of the impugned order dated 3rd December, 2016, it appears that there is no reflection noted in such order about participation, or willful non participation of the opposite party no.1, during the process of making consideration of application under Section 151 C.P.C. for revival of the suit.

When it is basic and fundamental contention of the petitioner that no opportunity of hearing was extended to the petitioner, this Court is of the view that, if an opportunity is extended to the petitioner, giving him chance to contest the same, the same will not cause any prejudice to either of the parties to this case, and rather, it would subserve the purpose of justice.

The impugned orders are thus set aside with a direction upon the court below to rehear both the applications afresh, within a period of eight (08) weeks from the date of communication of this order, providing an opportunity to petitioner to contest the petition,

filed by either of the parties to this case against one another, and resolve the same in accordance with the law, so that the grievance raised by either of the parties to this case may be adequately redressed.

This order is passed without going into the merits of the case and without prejudice to the rights and contentions of the parties.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)