

18.02.2022
Ct. 21
D/L 11
ab

C.O. 637 of 2021
With
CAN 1 of 2021
(Via Video Conference)

Biswanath Dey
-Vs-
Tapan Kundu & Ors.

Mr. Abhijit Ray,
Mr. Shubham Gupta,

... for the petitioner

Mr. Abhijit Ray, learned advocate appears for the petitioner.

The learned advocate for the petitioner files affidavit of service along with postal receipts and track report along with eight undelivered envelopes. The track report shows that the items could not be delivered to the addressee due to the door was found under lock and key. The track report also shows in respect of registered item No. EW148272717IN addressed to Smt. Mummun Banerjee, has been returned with the endorsement “addressee deceased”.

The petitioner has filed an application being CAN 1 of 2021 for expunging the name of Smt. Munmun Banerjee, the opposite party No. 5 herein from the cause title of the present revisional application.

Since the original CAN 1 of 2021 is not available in the record, the learned advocate for the

petitioner produces a copy of the same and the same be treated as original till the original CAN 1 of 2021 is traced out. Let the same be kept with the record.

None appears on behalf of the opposite parties when the matter is called.

Consequently, CAN 1 of 2021 is allowed.

Let the name of Smt. Munmun Banerjee be expunged from the cause title of the present revisional application.

The revisional application is taken up for hearing.

Heard the learned advocate for the petitioner.

The petitioner has filed the present application under Article 227 of the Constitution of India challenging the order dated 06.01.2021 passed by the learned 13th Judge, City Civil Court, Calcutta in Title Suit No. 163 of 2019, whereby the learned Court below has been pleased to reject the petitioner/plaintiff's application under Order 5 Rule 20 of the Code of Civil Procedure and direct the petitioner/plaintiff to serve summons upon the defendant Nos. 1, 2 and 4 afresh.

It appears from the order impugned dated 06.01.2012 that the bailiff of the Court has reported that he could not serve the notice to the defendant Nos. 1, 2 and 4.

Order 5 Rule 20 of the Code of Civil Procedure provides for substituted service. If the Court finds that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason, the summons could not be served in the ordinary way, the Court shall order the summons

to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (If any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Order 5 Rule 20(1A) of the Code of Civil Procedure further provides that the Court can also order service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

Prima facie, it appears that that petitioner, who is the plaintiff in Title Suit No. 163 of 2019 is not being able to serve notice of the revisional application upon the defendants through registered speed post and the track report also reveals that the disputed premises under the occupation of the defendants' predecessor or defendants is under lock and key.

Similar situation is reflected from the order impugned. Therefore, it is not known why the learned Court below instead of taking recourse under Order 5 Rule 20 of the Code of Civil Procedure, insisted upon the petitioner/plaintiff to file requisite for issuance of summons upon the defendant Nos. 1, 2 and 4 through registered speed post.

Therefore, this Court finds that the order impugned suffers from illegality and/or material irregularity.

The order impugned dated 06.01.201 passed by the learned 13th Judge, City Civil Court, Calcutta in Title Suit No. 163 of 2019, is hereby set aside.

The petitioner is directed to take steps under Order 5 Rule 20 of the Code of Civil Procedure for effecting service of notice in connection with Title Suit No. 163 of 2019 by giving an advertisement in Bengali newspaper “Ananda Bazar Partrika” and also in English newspaper “The Telegraph” circulating in the locality in which the defendant Nos. 1, 2 and 4 are last known to have actually and voluntarily resided, carried on business or personally worked for gain by filing draft copy of notice for paper publication before the learned Court below.

The revisional application being **C.O. 637 of 2021** is disposed of.

Connected application, if any, stands disposed of.

Interim order, if any, stands discharged.

Department is directed to tag CAN 1 of 2021 with the main file.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)

