

(84)
07.04.2022
(p.jana)

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

CO No. 1624 of 2007

**Sandhya Das
-versus-
Ratan Das**

Mr. Dipankar Dhar,
Mr. Rudra Dhar, ... for the petitioner.

Despite repeated attempts, the presence of the opposite party could not be secured.

Mr. Dhar, learned counsel appearing for the petitioner, files affidavit of service wherefrom it appears that even attempt to serve the notice upon the opposite party through Courier Service failed.

The revisional application under such circumstances, is taken up for ex parte disposal.

The present application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for recovery of possession and is directed against the order dated September 12, 2006 passed by the 5th Court of learned Civil Judge (Junior Division), Alipore, District : 24 Parganas (South) in the said suit being Title Suit No. 298 of 2005.

The defendant, the opposite party herein fails to file written statement within the prescribed period of limitation as such, the learned Trial Judge by the order dated February 16, 2006

directed the defendant to show cause as to why the suit shall not be proceeded ex parte against him.

The plaintiff on February 28, 2006 filed an application for pronouncement of judgment in the suit in accordance with Order VIII Rule 10 of the Code of Civil Procedure. The defendant on the said date filed a reply to the said show-cause which was neither verified nor signed. The learned Trial Judge by the order dated February 28, 2006 rejected the said reply and decided to proceed the suit ex parte against the defendant.

At this juncture on March 03, 2006 the defendant filed an application under Section 10 of the Code praying stay of the suit on the ground of pendency of a suit for partition between the parties. The learned Trial Judge fixed the hearing of the said application on May 08, 2006.

On May 04, 2006 i.e. the date already fixed for ex parte hearing of the suit vide order dated February 28, 2006, the peremptory hearing of the suit commenced, the evidence of the plaintiff was recorded and she was discharged.

The learned Trial Judge fixed May 08, 2006 as the date for ex parte argument of the suit but on the said date the learned Trial Judge took up the hearing of the said application under Section 10 of the Code and fixed June 28, 2006 for

passing order on the said application and further directed that the argument in the suit would be heard after disposal of the said application, on the said date, written notes on argument on behalf of the plaintiff was filed.

On June 28, 2006 the order on the said application could not be passed, as the Presiding Officer was not available.

The plaintiff thereafter on September 12, 2006 filed another application which was in effect an application for pronouncement of the judgment in the suit under Order VIII Rule 10 of the Code.

The learned Trial Judge by the order impugned has refused to pass such judgment on the said application dated September 12, 2006 without disposing the said application under Section 10 of the Code and directed service of written statement filed by the defendant.

Direction for service of written statement filed by the defendant even after posting the suit ex parte against him after rejection of his reply to show cause could not be reconciled with as such the Lower Court Record was called for.

On scrutiny of the said record it is found that there is a written statement on record filed by the defendant on May 20, 2006.

The said written statement does not deserve any consideration since it was filed after rejection

of the reply of the defendant to the show-cause issued by the learned Trial Judge as to why the suit shall not be proceeded ex parte against him for not filing written statement within the prescribed period of limitation.

Mr. Dhar, learned counsel for the petitioner, submits that the defendant prays for stay of further proceedings of the present suit on the ground of the pendency of a partition suit being Title Suit No. 159 of 2005 before the 7th Court of learned Civil Judge (Senior Division), Alipore, District : 24 Parganas (South) but the said suit has already been dismissed for non prosecution on June 12, 2013, as such, the application under Section 10 of the Code has become infructuous.

He files a photocopy of the certified copy of the said order passed in the said suit, which is taken on record.

It is rightly submitted by Mr. Dhar that in view of dismissal of the said partition suit, the application under Section 10 of the Code filed by the defendant has become infructuous.

Therefore, there is no impediment before the learned Trial Judge to proceed with the suit and to pronounce a judgment in accordance with Order VIII Rule 10 of the Code.

The order impugned for the aforesaid reason is set aside.

The learned Trial Judge is directed to dispose of the said suit as expeditiously as possible in accordance with law preferably within a period of thirty available effective working days of his Court from the date of receipt of the Lower Court Record.

Let the lower Court record be sent down by special messenger at the costs of the plaintiff, such cost be put in within a week from date.

The department is directed to expedite the return of the Lower Court Record on deposit of the said costs.

CO 1624 of 2007 is disposed of on the above terms without any 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.)