

29.9.2022
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Ct. no. 652
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C.O. 1308 of 2021

Smt. Arundhuti Ganguly
Vs.
Sri Ranjit Kumar Ganguly

Mr. Sayantan Rakshit
Ms. Anita Khatri ...for the petitioner

Mr. Arnab Roy
Ms. Sayani Ahmed ...for the opposite party

Affidavit of service filed by the petitioner, be kept with the record.

The petitioner has filed this application under Article 227 of the Constitution of India against the order dated 2.2.2021 passed by the learned Civil Judge, Senior Division, 10th Court, Alipore, 24 parganas, (South).

The petitioner contended that the opposite party filed title suit no. 385 of 2018 for eviction of trespasser and recovery of khas possession. The summon was served upon the defendant. Accordingly, the defendant has engaged his lawyer and had given instruction for taking time to file written statement. Thereafter, after Covid Pandemic the defendant engaged another lawyer to collect "History of case hearing" which showed that case is fixed for steps as on 4.6.2021 and thereby next date on 16.9.2021, however on 2.2.2021 learned court passed the impugned order.

It appears from the impugned order that the trial court on perusal of service return, came to the conclusion that the summon has been duly served upon the defendant and accordingly the trial court was pleased to fix ex parte hearing of the suit against the sole defendant on 14.6.2021.

Being aggrieved and dissatisfied with the said order, the petitioner has preferred this revisional application.

Learned counsel for the opposite party submits that after passing the aforesaid order, the trial court has proceeded for ex parte hearing and after taking evidence, the suit is now posted for ex parte argument.

I have heard the learned lawyer for both sides.

It appears that the petitioner has ample scope under order IX, rule 7 of Civil Procedure Code to agitate before the trial court by making a prayer for recalling the order by which suit has been posted for ex parte hearing and to pray for giving him an opportunity to contest by filing written statement.

Considering the facts and circumstance of the case, C.O. 1308 of 2021 is disposed of with the following observation:

The defendant petitioner will be at liberty to file recall application along with written statement if any, within a period of four weeks from the date of the communication of the order and in the event of filing

such recalling application along with written statement by the defendant, the trial court will dispose of the same in accordance with law without being influenced by any observation made by this court, in default, the order impugned shall stand affirmed.

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

(Ajoy Kumar Mukherjee, J.)