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C.O. 1558 of 2022

**Mohammed Kashif
Vs
Faiyaz Ahmed Shams & Ors**

Mr. Probal Mukherjee, Sr. Adv
Mr. Joyjeev Medhi, ... For the petitioner.

Mr. Ashok Bhattacharya,
Sk. Zahiruddin,
Ms. Nahid Rahman,
... For the Caveator/plaintiff.

Mr. Akbar Ali, ... For the Opposite Party Nos. 4–5.

Liberty is given to correct the cause title and the prayer portion of the instant revisional application.

Petitioner assails two orders dated 15th December, 2021 rejecting Order 1 Rule 10 of the Code of Civil Procedure, and the order dated 2nd May, 2022 filed by the petitioner under Section 151 of the Code of Civil Procedure praying for modification of order dated 15th December, 2021.

Mr. Probal Mukherjee, learned senior advocate appearing for the petitioner submits that the parent order dated 15th December, 2021 rejecting the prayer under Order 1 Rule 10 of the Code of Civil Procedure is not merited one. According to Mr. Mukherjee, such petition went unremoved. The same was rejected by the Court below, without entering into the merits of the application.

It is in such context, an application was then

filed under Section 151 of the Code of Civil Procedure praying for modification of the parent order referred above, which was also rejected by order dated 2nd May, 2022.

Mr. Ashok Bhattacharya, learned advocate appearing for the plaintiffs/opposite parties submits that the conduct reflected by the petitioner, sought to be added, is highly harrasive one. The Court below already granted as many as eight dates to hear out the prayer for addition of the parties, and dispose of the same on merits. It is further contended by Mr. Bhattacharya that even after fixing the date for hearing as last chance in respect of the prayer for addition of the parties, the petitioner sought to be added, preferred to remain absent for the reasons best known to the petitioner.

Mr. Akbar Ali, learned advocate appearing for the opposite party nos. 4-5 submits that there are some compelling circumstances to seek for the adjournments resulting in delay to the disposal of some interlocutory applications.

Having considered the submissions of both sides, it appears that the prayer for addition of the parties has not been disposed of on merits, though the Court below already fixed date granting last chance to the petitioner. Even after knowing the last date for hearing of addition of the parties, the same

could not be properly utilised resulting in serious harassment caused to the plaintiffs/opposite parties.

Such harassment needs to be checked up saddling with costs, otherwise the proceeding pending in the Court below would be never ending one.

Since the application for addition of the parties has not been disposed of on merits, an opportunity of hearing, if granted, with some costs, that will not cause prejudice to either of the parties to this case.

The revisional application is thus disposed of upon setting aside the order dated 15th December, 2021 and dated 2nd May, 2022 relatable to the prayer for addition of the parties under Order 1 Rule 10 of the Code of Civil Procedure, subject to payment of cost of Rs. 10,000/- to be paid by the petitioner to plaintiffs/opposite parties within seven days from the date of communication of this order to the Court below.

Upon making deposit of such cost, as referred hereinabove, the Court below subject to convenience and suitability may fix the date within a fortnight thereafter for hearing of petition under Order 1 Rule 10 of the Code of Civil Procedure.

While endeavouring disposal of order under Order 1 Rule 10 of the Code of Civil Procedure, an opportunity of hearing must be extended to both the

parties, this Court however clarifies that there will be no further latitude shown to the petitioner, sought to be added for whatever may be the reasons, and as such the application praying for addition of the parties has to be disposed of peremptorily within the date to be fixed by the Court below, as referred hereinabove.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)