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C.O. 1642 of 2022

**Sm. Dipali Das & Anr
Vs
Kamakhya Prosad Chowdhury**

Mr. Partha Pratim Roy, ... For the petitioners.

Mr. Kausik Dey, ... For the opposite party.

The subject matter of challenge in this revisional application is against the rejection of a prayer under order 41 Rule 27 read with Section 151 of the CPC, praying for adducing additional evidence.

Mr. Partha Pratim Roy, learned advocate appearing for the petitioners submits that ex parte decree granted in this case was challenged upon filing a Misc Case No. 34 of 2015 under Order 9 Rule 13 CPC.

Such Misc Case was disposed of upon collecting evidence. Against the decision of the misc case declining to interfere with the ex parte decree granted by the trial Court, an appeal was then carried being Misc Appeal No. 09 of 2020 before the learned Additional District Judge, Fast Track 3rd Court, Barrackpore.

Mr. Roy submits that date of gathering knowledge of ex parte decree granted by the Court below is the sole subject of challenge under Order 9 Rule 13 CPC as well as in the appeal preferred against the decision of Misc Case No. 34 of 2015. It is contended by Mr. Roy

that that after the ex parte decree was granted, and after gathering information from the local people, the petitioner applied for obtaining information slip, and as per information furnished, he also applied for the relevant documents to assail the ex parte decree.

It is thus submitted by Mr. Roy that since the petitioners had no knowledge about the ex parte decree granted in this case, upon gathering information of passing ex parte decree, the petitioners applied for information slip in exercise of his due diligence, and also collected the relevant documents to assail the ex parte decree.

Mr. Kaushik Dey, learned advocate appearing for the caveator/opposite party submits that the documents sought to be produced in order to establish date of gathering knowledge were no new circumstance, and it was very much within the knowledge of the petitioners, and further the petitioners did not exercise his due diligence to take the benefit of Order 41 Rule 10 CPC. More so, even at the time of adducing evidence in connection with Misc Case no. 34 of 2015, no such document was produced.

Mr. Dey further contends supporting the order of the Court below that impugned order does not require any interference.

Having considered the submissions of both sides, it appears that an endeavour has been exercised by the

petitioners in aid of Order 41 Rule 27 CPC to produce some documents, which could not be collected earlier to establish the date of gathering knowledge as to passing the ex parte decree granted in this case by the Trial Court.

Upon perusal of the impugned order, it appears that though the First Lower Appellate Court observed that documents sought to be produced are matter of records, and no formal proof is required, while rejecting the prayer under Order 41 Rule 27 of the CPC, it became oblivious of his own observation.

Since date of gathering knowledge is the only subject of dispute between the parties, if an opportunity is granted permitting the petitioners to produce the relevant documents as submitted to be produced that would not cause prejudice to the opposite parties.

The impugned order dated 24th March, 2022 rejecting the prayer to adduce additional evidence under Order 41 Rule 27 of the CPC is set aside.

Petitioners are permitted to adduce the additional evidence to felicitate the Court to adjudicate the issue pending before it so as to put an end to the litigation.

This would not, however, prevent the First Lower appellate body to collect additional evidence itself while endeavouring disposal of pending mis appeal no. 09 of 2020.

While collecting the additional evidence the right of cross-examination of the opposite parties must be extended to challenge the veracity of the evidence to be adducted in aid of Order 41 Rule 27 CPC.

Since a small point is involved in this case as mentioned hereinabove, this Court reposes trust and confidence upon the First Lower Appellate Court that the pending appeal may be disposed of in an expeditious manner preferably within a period of four months from the date of communication of this order.

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)