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AGM 2022
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C.O. 1957 of 2022

**Mr. Sumitra Kumar Singh
Vs
Mrs, Anila G. Ojha & Ors**

Mr. Indrajeet Dasgupta,
Ms. Puspita Bhowmick,
Ms. Rima Biswas,

... For the petitioner.

Mr. Shounak Mukhopadhyay,
Mr. Anupam Ghosh,

... For the opposite parties.

Dismissal of a suit for default upon rejection of a show cause application, filed by the petitioner/plaintiff is under challenge in this case.

Admittedly, this is a suit for eviction.

Mr. Indrajeet Dasgupta, learned advocate appearing for the petitioner submits that for the illness of plaintiff, he had been to country abroad for treatment in 2018, appointing two constituted attorneys for the purpose, so that the further moment of the suit may not be hindered, in any manner whatsoever.

On the adjourned dates, an adjournment was proposed on three occasions for and on behalf of plaintiff for some inconvenience occurred on the part of the constituted attorneys.

The Court below rejected the prayer for adjournment, and directed a show cause to be filed as to why the suit should not be dismissed for default.

A show cause thereafter was filed setting forth the grounds focussing the illness suffered by the plaintiff

himself, and his treatment undertaken in USA.

It is contended by the learned advocate for the petitioner that the illness suffered by the plaintiff and the inconvenience faced by the constituted attorneys could not be duly considered by the Court below, resulting in inappropriate dismissal of the suit for default.

Incidentally, it is submitted by the learned advocate for the petitioner that plaintiff has come back to Calcutta though he may be having some ailments at the moment, and the evidence of suit may be permitted to be adduced upon restoring the suit, otherwise there will be serious prejudice caused to the plaintiff, for the mis-appreciation of the show cause by the Court below.

Mr. Shounak Mukhopadhyay, learned advocate appearing for the opposite parties replies controverting the submission, advanced by the petitioner, alleging further that mere filing of an adjournment petition would not itself be grounds to allow the prayer for adjournment.

Reliance was placed on full bench decision reported in **(1907) 34 ILR 403** in the case of **Satish Chandra Mukherejee -vs- Ahara Prasad Mukherejee**, to submit that mere appearance of counsel to make an application for adjournment ought not to be construed sufficient enough for readmission, unless proper cause is shown.

Upon referring such citation, learned advocate for the opposite parties submits that since the show cause submitted was bereft of proper causes in support of the restoration of the suit, the Court below was justified in recording dismissal of the suit for default.

Having considered the submissions of both the parties, it appears that unmerited dismissal of a suit is under challenge in this case.

The contention raised by the petitioner is against mis-appreciation of the show cause submitted by the plaintiff focussing the illness suffered by the plaintiff, and the inconvenience suffered by the constituted attorneys for and on behalf of the plaintiff.

The grounds disclosed in the show cause are definitely within the meaning of proper causes.

In a situation like this, the citation referred would be without any relevance.

When the plaintiff himself is very much available in Calcutta, and it is assured by the learned advocate for the petitioner below that plaintiff is ready to adduce evidence in accordance with law, this Court is of the view that if an opportunity is given to plaintiff to establish his case, as disclosed in the pleadings, that would not cause any prejudice to the opposite parties.

For the reasons disclosed hereinabove, the impugned order is set aside with a direction upon the Court below to restore the suit forth with, if necessary

upon notice to the opposite parties. Upon restoring the suit, after adhering to the formalities still left to be complied with, the suit may be set for peremptory hearing, if there is no interlocutory application left to be undecided.

The logical conclusion of the suit as such, may be reached at an early date, without granting unnecessary adjournment, preferably before the end of May, 2023, if necessary upon causing disposal of the interlocutory application, if there be any pending in the mean time.

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)