

28.04.2022
Item No.6
Ct. No.7
CHC
(disposed of)

**C.O.1941 of 2021
(Physical Hearing)**

**Sri Barun Kumar Panja & anr.
Vs.
Sri Sujay Basu**

Mr. Dilip Kumar Chatterjee,
Mr. Sagnik Chatterjee
...for the petitioners

Mr. Tanmoy Chowdhury,
Ms. Ritoprita Ghosh
..for the opposite party

The matter has come up in the list upon mentioning of the learned advocate for the petitioners.

The subject-matter of challenge in this case is against the order dated 24th September, 2021, passed by learned Civil Judge (Junior Division), 2nd Court, at Serampore, Hooghly, in Misc.Case No.19 of 2018, arising out of Title Suit No.72846 of 2017, allowing the Misc.Case under Order 9 Rule 13 C.P.C. with a cost of Rs.1,000/-.

Admittedly, eviction decree was granted *ex parte*, in this case on 4th January, 2018. After *ex parte* decree of eviction, the same was challenged upon resorting to provisions available under Order 9 Rule 13 C.P.C. It was registered in connection with Miscellaneous Case No.19 of 2018. The sole challenge taken by the

opposite party/defendant against an *ex parte* decree was that the process server of the court, supposed to serve summons, after entering into a conspiracy had submitted a false report of service of summons, without actually effecting service of summons upon the opposite party/defendant.

Mr. Chatterjee, learned advocate appearing for the petitioners strenuously argues that the allegation pertaining to the corruption levelled against the court staff could not be substantiated by adducing sufficient evidence, both oral and documentary. The court below even in the absence of any reasonable evidence touching the alleged corruption on the part of the court staff had adopted a liberal approach allowing Misc.Case enabling the opposite party/defendant to contest the suit thereby setting aside the *ex parte* decree.

According to learned advocate for the petitioners, the Misc.Case referred hereinabove has been erroneously decided.

Per contra, learned advocate appearing for the opposite party/defendant submits that his entire approach was to put up a defence in connection with a suit seeking eviction of the licensee. Though the opposite party/defendant failed to adduce sufficient evidence in support of the allegations raised in the Misc.Case against the process server of court, but the

same should not be treated to be fatal depriving him to contest the suit, Mr. Chowdhury argues.

True it is that the allegations pertaining to the corruption against the court staff as regards service of summons has not been substantiated, but at the same time, the harassment caused to the plaintiffs/petitioners for the unwarranted allegation being raised to frustrate the *ex parte* eviction decree has to be taken into account, while extending an opportunity to contest the suit, after vacating the *ex parte* decree. The conduct of the opposite party/defendant is highly revealing, and this may be perceived from the *ex parte* decree, being granted in this case. In context with the revealing conduct of the opposite party/defendant, as established in the record, such conduct needs to be saddled with sufficient amount of cost.

The impugned order is thus modified directing opposite party/defendant to deposit Rs.10,000/- (Rupees Ten Thousand) as cost to petitioners/plaintiffs within fortnight from hence.

It is, however, clarified that failure to deposit the cost mentioned hereinabove, the written statement may not be automatically accepted.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)