

18.04.2022
Item No.6
Ct. No.7
CHC
(disposed of)

**C.O.2015 of 2021
(Physical Hearing)**

**NUREL MOLLA
Vs.
Rosenara Begam & anr.**

Mr. Palash Mukherjee
...for the petitioner/opposite party

Mr. Partha Pratim Roy,
Mr. Anirban Das
...for the opposite parties/plaintiffs

The matter has come up in the list under the heading "To Be Mentioned" on the prayer of the learned advocate for the petitioner.

By the order impugned, learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly, in P.M.C. No.37 of 2012 and P.M.C. No.27 of 2014, has rejected the petition filed by the petitioner praying for vacating the order fixing for *ex parte* argument.

Mr. Mukherjee, learned advocate appearing for the petitioner/opposite party submits that the *ex parte* hearing of the preemption case has been vacated by the court below on the prayer of petitioner directing him to pay cost of Rs.500/- to opposite party/plaintiff. On the date fixed for the deposit of cost, though, the petitioner made over money for deposit of such cost to his learned lawyer, but the same could not be deposited making due compliance of the order of the Court.

It is contended by the learned advocate for the petitioner that the opportunity to contest the preemption case could not be utilized by the petitioner litigant, because of some laches on the part of the learned advocate representing the petitioner in the court below. Thus, in the absence of deposit of cost, the *ex parte* hearing of the preemption case further proceeded, and ultimately, posted for hearing of *ex parte* argument.

Learned advocate for the petitioner candidly submits that an opportunity to contest the case may be extended, otherwise the previous opportunity granted by the court below to contest the case, upon vacating the *ex parte* hearing of preemption case, may be frustrated.

Per contra, Mr. Roy, learned advocate appearing for the opposite parties/plaintiffs submits that the conduct exposed by the petitioner is very much revealing, and the same has been vividly disclosed in the order impugned.

There is nothing mentioned in the petition filed by the petitioner as to why the cost could not be deposited on the date scheduled by the court below. More so, even on the next date adjourned by the court below for depositing the cost, same could not be deposited.

Upon raising such objection, Mr. Roy submits that the order impugned must go unaltered.

Upon perusal of the order impugned, it appears that on 13th September, 2018, the *ex parte* hearing of the preemption case was set aside, conditioned by payment of cost of Rs.500/- by the petitioner to opposite parties/plaintiffs. The date was then fixed for payment of such cost. On the stipulated date for making deposit of cost i.e. on 5th December, 2018, the petitioner did not deposit the cost to court below, and even on adjourned date fixing 4th September, 2019, giving a further opportunity to petitioner to deposit the cost, as ordered, remained unpaid.

On the adjourned date, the petitioner again sought for time to deposit the cost, and it was rejected by the court below fixing the matter again for *ex parte* hearing. It is at the stage of argument, the petitioner again woke up and filed the instant petition dated 15th January, 2021, with a prayer for vacating the *ex parte* argument. Thus, it is very clear and conspicuous that that several dates went adjourned for deposit of cost, and even on the adjourned date suo moto being granted by the court below, the cost could not be deposited doing compliance of the direction of the court below. Such conduct undoubtedly has caused immense hardship to the opposite parties/plaintiffs, and the same needs to be saddled with compensatory cost of Rs.25,000/- (Rupees Twenty Five Thousand only).

The impugned order, is, thus set aside subject to payment of cost of Rs.25,000/- (Rupees Twenty Five Thousand only) by the petitioner to the opposite parties/plaintiffs within ten (10) days from hence.

Upon deposit of such amount being made within the period mentioned hereinabove, the written statement, if filed already may be accepted, and the preemption case may be proceeded further, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this direction and observation, 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.)