

29.11.2022
8
Ct. no. 652
sb

C.O. 2087 of 2021

Debasish Chakraborty
Vs.
Sri Samir Chandra Chandra & Ors.

Mr. Chitta Ranjan Chakraborty
Mr. Dip Jyoti Chakraborty
Mr. Sumit Banerjee ...for the Petitioner

Ms. Shohini Chakraborty
Ms. Prajaaini Das ...for the O.P. nos. 1 & 2

Challenging the order dated 28th September, 2021 passed by learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24 parganas in Ejectment Suit no. 139 of 2009, the present application under Article 227 of the Constitution of India has been preferred.

By the impugned order, the petitioner's prayer for vacating the order of ex parte hearing of the suit and also the prayer for filing written statement were rejected by the court below. The petitioner contended that the petitioner/defendant no. 2 is a tenant along with proforma defendants after the death of their father, Amarendra Nath Chakraborty and their mother, Tripti Kana Chakraborty in respect of the suit premises. The respondents/opposite parties/plaintiff nos. 1 to 5, filed aforesaid suit for eviction being ejectment suit no. 139 of 2009 on the ground of default. The petitioner came to learn from a reliable source that the suit has been filed

against the petitioner and after getting information slip through a lawyer, he filed an application for giving him an opportunity to file written statement. The aforesaid application was came up for hearing before the trial court and learned trial court was pleased to reject the said prayer by the order impugned.

Learned advocate for the petitioner submits that the trial court while passing the impugned order only mentioned about the order no 37 dated 12.8.2014 but did not consider the order no. 39 dated 5.11.2014 and order no. 42 dated 7.3.2015, wherefrom it is clear that the court below directed for newspaper publication for substituted service of summon in respect of the defendant nos. 1,2 & 4 who were not served with the summon and for which this substituted service of summon through paper publication was made. The petitioner/defendant no. 2 further submits that he neither filed Hazira (attendance) nor filed any Vakalatnama before the trial court and on enquiry he came to know that the defendant no. 3 might have wrongly filed Hazira mentioning the name of defendant no. 2 in the Hazira dated 2.8.2014. Accordingly, the petitioner has prayed for setting aside the aforesaid orders and to give him an opportunity to file a written statement so that he can contest the suit.

Ms. Sohini Chakraborty, learned advocate for the opposite parties vehemently opposed the prayer for

vacating the ex parte order and/or against their prayer to grant leave for filing written statement. She contends that the orders of the trial court clearly reveals that the defendant no. 2/petitioner was all along aware of the suit and in order to kill time, he intentionally did not file written statement within the statutory period. Accordingly, she submits that the order impugned passed by the trial court does not call any interference by this court.

Considered the submissions made by the parties, it appears that there are allegations and counter allegations against each other as to whether the summon was duly served upon the defendant no. 2 or not. Even without going to that controversy, in my considered opinion, if the petitioner no. 2/defendant no 2 are given an opportunity to contest the suit by granting leave to file written statement, subject to payment of cost and if the trial court is directed to conclude the proceeding within a time frame, the highest prejudice that may be caused to the plaintiff/opposite party no. 2, would be that the suit would be disposed of on merit after contested hearing and nothing more. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even fraction of rules of procedure, unless court is satisfied that the party applying was

acting *malafide* or that his blunder had caused injury to his opponent which cannot be compensated for by an order of cost.

In view of above, C.O. 2087 of 2021 is disposed of with a direction upon the trial court to accept the written statement subject to payment of cost of Rs. 20,000/- which the petitioner will pay to the opposite party/plaintiffs within a period of one month from the date of communication of the order. On such payment, the trial court will permit the defendant for filing written statement after vacating the order of *exparte* against the defendant no. 2. If written statement filed by the defendant no. 2 is accepted, then the trial court will frame the issue and will conclude the entire proceeding within a period of one year from the date of framing of issue and without granting any unnecessary adjournments to either of the parties. In default of payment of cost as above, the order impugned will survive.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)