

02.09.2022
Item No.24
Ct. No.7
CHC
(disposed of)

C.O.2578 of 2022

**Sujit Saha
Vs.
Dipali Banerjee**

Mr. Amrita Lal Dhar,
Mr. Abhijit Saha
...for the petitioner

Mr. Debdipto Banerjee
...for the opposite party

Petitioner assails the order dated 20th July, 2022, passed by learned Civil Judge (Junior Division), 1st Court, Sealdah, South 24 Parganas, in Ejectment Suit No.52 of 2021, rejecting the application filed by the petitioner/defendant for setting aside the order of *ex parte* hearing under Order 9 Rule 7 C.P.C.

Mr. Amrita Lal Dhar, learned advocate appearing for the petitioner submits that after being informed by the opposite party/plaintiff, the petitioner gathered knowledge about the pendency of this case, and entered appearance upon furnishing Vakalatnama on 6th January, 2022, when the suit has already been set for *ex parte* hearing.

It is contended by the learned advocate for the petitioner that in the meantime, the petitioner has already furnished written statement on 25th August, 2022 to contest the Ejectment Suit against the petitioner. Apart from written statement, petitioner is

submitted to have already filed petitions under Section 7(1) and 7(2) of the W.B.P. T. Act.

It is thus contended by the petitioner that opportunity of contest may be granted to the petitioner, though, there is some laches on the part of the petitioner to remain properly vigilant over the conduct of the case.

Learned advocate for the opposite party undertakes to file Vakalatnama in the department in course of the day.

Per contra, Mr. Debdipto Banerjee, learned advocate appearing for the opposite party/plaintiff upon receiving a copy of this application disputes with the submission advanced by the petitioner submitting that there was serious laches exposed and in the conduct of the petitioner which has been sufficiently disclosed in the order impugned, and in view of such conduct, there should not be any latitude shown to the petitioner, otherwise, there will be huge harassment caused to the opposite party/plaintiff.

Having considered the submission of both sides, it appears that an opportunity to contest the suit is only under dispute in this case, which was rejected by the court below under Order 9 Rule 7 C.P.C. This is an Ejectment Suit of 2021, wherein the defendant entered his appearance on 6th January, 2022, where the suit has already set for *ex parte* hearing. While submitting

this application under Order 9 Rule 7 C.P.C. for setting aside the *ex parte* hearing, though no written statement was filed together with a separate application stating the explanation of delay for acceptance of the same, but subsequently, the written statement has already been filed i.e. on 25th August, 2022. Filing of written statement at least reveals the intention of the defendant to contest the case. Though there is some laches on the part of the petitioner/defendant, but if an opportunity to contest is given that may not cause any prejudice to either of the parties to this case.

For the reasons mentioned hereinabove, the order dated 20th July, 2022 is set aside with a direction upon the court below to rehear the same within a eight (08) weeks from hence together with the application proposing for acceptance of the written statement.

Petitioner is given liberty to file a separate application explaining the delay together with a prayer for acceptance of the written statement within a fortnight from hence upon supplying a copy of the same to the opposite party.

While hearing afresh, the prayer under Order 9 Rule 7 C.P.C. as referred hereinabove, an opportunity of hearing must be given to both the parties.

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

Parties are directed to make communication of this order to the learned court below.

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.)