

22.03.2022
Item No.12
Ct. No.7
CHC

**C.O.2326 of 2021
(Physical Hearing)**

**Ratan Kumar Ghosh & anr.
Vs.
Shila Roy & anr.**

Mr. Sukanta Chakraborty,
Mr. Anindya Halder
...for the petitioners

Mr. Abhijit Ray,
Mr. Shubham Gupta
...for the opposite parties

Petitioners have assailed the order dated 8th December, 2021, passed by learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, in Title Suit No.269 of 2015, allowing the petition, filed by defendants/opposite parties praying for vacating the order fixing the suit for *ex parte* hearing and argument thereafter.

Mr. Chakraborty, learned advocate appearing for the petitioners/plaintiffs submits that no explanation has been offered for a long period of six years soon after the date of receiving the summons, as to what prevented the opposite parties/defendants from appearing in the case, and filing written statement therefor.

The summons was received by defendants on 6th August, 2015. The suit was posted for *ex parte* hearing vide order dated 16th November, 2016. Suddenly, on

24th November, 2021, the opposite parties/defendants woke up, and chose to contest the case with a prayer for vacating the *ex parte* hearing upon submitting written statement.

Mr. Chakraborty contends that in the absence of sufficient explanation being offered, the court below ought not have vacated the order fixing the suit for *ex parte* hearing thereby allowing the defendants to contest the suit upon accepting written statement with a cost of Rs.10,000/- only.

Mr. Chakraborty submits that when defendants did not respond to summons, and deliberately chose to cause delay to the disposal of suit, such opportunity to contest the suit at belated stage would cause procrastination to the suit, and the learned court below has mechanically allowed the prayer with some costs.

Per contra, Mr. Abhijit Ray, learned advocate appearing for the opposite parties/defendants submits that there are good reasons explained in the relevant application for vacating the *ex parte* hearing as to what prompted the defendants from not appearing in the court below earlier than the date i.e. 24th November, 2021.

Learned advocate for the opposite parties submits that an opportunity to contest the case may be given ignoring the technicalities.

It is thus submitted by the learned advocate for the opposite parties that the order does not call for any interference.

Having considered the submission of both sides, and upon perusal of the impugned order, it appears that there has been some delay/laches on the part of the defendants to contest the case upon registering their appearance at the appropriate point of time. Though, there has been some explanation offered, while seeking to vacate the *ex parte* hearing, but that would not itself condone the conduct of the opposite parties/defendants. Since, the suit was filed in the year 2015, there has been long harassment in the meantime, caused to the petitioners/plaintiffs, which must be adequately compensated by the defendants/opposite parties.

True it is that Rs.10,000/- have been awarded as costs against the defendants/opposite parties, but that amount in the perception of the Court is not appropriate to redress the harassment already suffered by the petitioners/plaintiffs. In that view of the matter, the order needs modification. The amount of cost is thus modified to Rs.20,000/- instead of Rs.10,000/-, which must be deposited within three weeks from the date of communication of this order. If any amount is already deposited, that must be adjusted.

Defendants/opposite parties are accordingly directed to deposit the costs mentioned hereinabove to plaintiffs within the period referred hereinabove.

Upon considering the long pendency of the suit, a direction is necessary so that the suit may be expeditiously disposed of.

Learned court below is thus directed to ensure expeditious disposal of suit preferably within a period of fifteen (15) months from the date of communication of this order, without granting any unnecessary adjournment, unless it is extremely unavoidable. While endeavouring expeditious disposal, opportunity of hearing must be given to both the parties.

With this direction/observation, 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.)