

29.11.2022
Item No.2
Ct. No.7
CHC
(disposed of)

C.O.3021 of 2022

**Sk. Mansur Ali & anr.
Vs.
Amin Biswas & ors.**

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das
...for the petitioners

Mr. Farhan Ghaffar,
Mr. Aftab Khaudekar,
Ms. Sagufta Saba Yasmin
...for the opposite parties

Subject-matter of challenge is against rejection of a prayer for recalling, which was filed by the petitioners/defendants to reopen the prayer for injunction, made absolute in the absence of the petitioners/defendants, on 17th May, 2022.

Admittedly, there is an injunction order already granted in this case. Petitioners/defendants filed objection against the injunction application. It was posted on 8th March, 2022, for hearing of the injunction application.

Due to the non appearance of the petitioners/defendants, a show cause was then ordered by the court below. But on the schedule date, next posted, neither any show cause could be filed, nor any accommodation was proposed by the petitioners/defendants, and as a result of which, the

court below made the injunction order absolute on 17th May, 2022, having found no other alternative at the moment. A recalling application was filed by the petitioners/defendants on the same day, which was posted for hearing on 15th July, 2022, it was rejected accordingly by the order impugned.

Mrs. Chakraborty, learned advocate appearing for the petitioners upon furnishing such inputs, submits that the entire mischief caused to the petitioners is due to a bona fide mistake, consequent upon a misposting of date in the diary, maintained by the law clerk attached with the learned advocate.

It is submitted further that for the unwanted conduct of any learned advocate representing petitioners in the court below if there be any, innocent litigants should not be made victim.

Mrs. Chakraborty proposes for simply an opportunity be given, so that injunction application may be disposed of giving the petitioners an opportunity of hearing, as pleadings so far as injunction application is considered, is complete in the meantime.

Per contra, Mr. Farhan Ghaffar, learned advocate appearing for the opposite parties strenuously argues that the conduct of the petitioners is not at all satisfactory, which got sufficiently revealed in the impugned order.

It is thus submitted that when the court below has rejected the prayer for recalling application upon exercising due discretion, the same must go uninterfered with.

Incidentally, it is brought to the attention of this Court by the learned advocate for the opposite parties to an order passed in C.O.651 of 2021 to submit that there has been a direction passed by this Court to ensure expeditious disposal within the period of time, as disclosed in the order dated 20th April, 2021.

Upon referring such order-sheet, Mr. Ghaffar submits that it is purposive application simply to defeat the direction passed in C.O.651 of 2021, which should not be allowed to be frustrated in the way as the petitioners chooses to do.

Having considered the submission of both sides, it appears that injunction order having made absolute, due to non appearance of the petitioners, is the bone of contention between the parties.

While according to petitioners it is consequent upon misposting of the diary, but the same has been described otherwise by opposite parties, it is as simply deliberate one to cause delay to the disposal of suit.

As per submission disclosed by both the parties, the suit is otherwise ready for peremptory hearing, and the pleadings are complete so far as parties are concerned. When it is the only contention of the

petitioners that an opportunity of hearing be given upon making consideration of recalling application, this Court is of the view, that if such opportunity is given to the petitioners, with some costs to compensate the harassment already caused to the opposite parties, that will not cause any prejudice to either of the parties to this case, and rather it would subserve the purpose of justice.

The impugned order is thus set aside, subject to payment of cost of Rs.7,000/- (Rupees Seven Thousand only) to be paid by petitioners within seven days from the date of communication of this order to the opposite parties, with a direction to reconsider the recalling application filed on 17th May, 2022 giving a look afresh without being influenced by the tentative findings already reached against any of the parties to this case, and dispose of the recalling application within fortnight thereafter.

Incidentally, it may be kept in mind that an innocent litigant may not be a victim of consequences, due to unwanted conduct of any learned advocate, representing the defendants, if there be any.

After causing disposal of the interlocutory application, the logical conclusion of the suit may be reached at an early date, upon sensing the purport and message already contained in C.O.651 of 2021.

Mrs. Chakraborty assures this Court that there will be cooperation extended to the court below without seeking unnecessary adjournment, so that logical conclusion of the suit may be reached at an early date.

Parties are directed to make communication of this order to the 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.)