

30.01.2023

Sl.No. 15
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 673 of 2020
With
CAN 1 of 2019 (Old CAN 11809 of 2019)

Shri Dipak Kumar Sahoo
VS
Sri Deb Dulal Pradhan & Anr.

Mr. Mrinal Kanti ghosh
...for the defendant/appellant

Mr. Indranil Nandi
Mr. Deba Prosad Samanta
Mr. Sayak Konar
...for the respondents

Re: CAN 1 of 2019 (Old CAN 11809 of 2019)

We formally admit the appeal.

We have substantially heard learned
counsel for the parties.

Having done so we are in a position to
dispose of this appeal, dispensing with all
formalities.

The impugned judgment and order of the
learned court below dismisses the application of
the appellant/defendant under Order 9 Rule 13
of the Code of Civil Procedure to set aside an
ex parte decree against him. The delay was of
about 57 days.

In considering this appeal, certain facts are
to be borne in mind.

The suit is of 2005 for specific performance of an agreement for sale of an immovable property in Purba Medinipur.

The appellant/defendant took as many as 38 adjournments before the suit was decreed ex parte in 2014. Thereafter, the said application to set aside this decree was filed after 57 days and dismissed on 8th August, 2019.

Thus, the lis was pending for 15 years.

Considering the above facts and for the ends of justice, we think that the Order 9 Rule 13 application should be heard out on merits. We dispose of this appeal and the connected application by setting aside the impugned judgment and order dated 8th August, 2019 with a direction upon the learned court below to hear out the application under Order 9 Rule 13 of the Code of Civil Procedure within 8 weeks of communication of this order.

This order is conditional upon the appellant/defendant paying costs assessed as Rs. 5,000/- to the advocate on record for the respondents in this court, by 6th February, 2023.

In default of payment of costs by the aforesaid date, the matter may be brought to the notice of the learned court below, which shall thereupon treat its impugned judgment and

order dated 8th August, 2019 as final and binding upon the parties and dismiss the Order 9 Rule 13 application.

The appeal and the connected application are disposed of.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)