

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 197 of 2023

Nasiruddin Jamadar
Vs.
Taufick Jamadar @ Taufik Jamadar & Ors.

Mr. D.K. Adhikari
Mr. Debdip Adhikari
... For the petitioner/defendant

Mr. Masud Karim
Mr. Abhijit Chatterjee
Mr. Galib Ahsan
... For the opposite party/plaintiff

In this application the order dated 13th December, 2022 in connection with Title Suit No.477 of 2020 passed by the learned Civil Judge (Senior Division), 10th Court, Alipore, South 24-Parganas, has been challenged.

The issue, high of the list, is that by the impugned order the learned Judge did not dispose of the application under Order XXXIX Rule 4 of the Code of Civil Procedure (in short, CPC) dated 12th October, 2020.

Learned advocate appearing on behalf of the petitioner/defendant has contended that the application under Order XXXIX Rule 4 of the CPC was rejected only on the ground that the application can only be considered after adducing evidence and not at this stage.

Learned advocate appearing on behalf of the opposite party/plaintiff has submitted that there is no

infirmity or illegality in the impugned order with regard to the application under Order XXXIX Rule 4 of the CPC.

From the impugned order, I find that the learned Judge took up the two applications under Order XXXIX Rule 4 of the CPC dated 12th October, 2020 as well as the application under Order XXXIX Rule 7 of the CPC dated 1st March, 2021. At the time of disposing the application under Order XXXIX Rule 4 of the CPC, the learned Judge was pleased to opine that the application cannot be heard as it requires evidence and considering the stage of proceeding, the learned Judge rejected the application under Order XXXIX Rule 4 of the CPC.

Considering the observation of the learned Court with regard to the application under Order XXXIX Rule 4 of the CPC, I fail to make me understand that what prevented the learned Judge to take evidence before adjudicating the application under Order XXXIX Rule 4 of the CPC being an interlocutory application cannot be taken up along with the trial of the suit. Such observation is, in my opinion, devoid of merit.

In terms of the aforesaid observation, I am of the opinion that the order passed in respect of the application under Order XXXIX Rule 4 of the CPC is not sustainable in law and is liable to be set aside and is accordingly set aside.

With regard to the application under Order XXXIX Rule 7 of the CPC, it is submitted by the learned advocate appearing on behalf of the petitioner/defendant that copy of the application under Order XXXIX Rule 7 of the CPC was never served despite the order was passed by the learned Court on 2nd September, 2022 directing the plaintiff to serve copy upon the defendant.

In opposition to that, the learned advocate on behalf of the opposite party/plaintiff has submitted that copy of the application under Order XXXIX Rule 7 of the CPC was duly served upon the defendant and the matter was heard in presence of both sides on 13th December, 2022 when the impugned order was passed.

It takes me aback that what prevented the learned advocate appearing on behalf of the petitioner/defendant to make submission before the learned Judge on 13th December, 2022 regarding non-compliance of the order dated 2nd September, 2022 by not serving copy of the application under Order XXXIX Rule 7 of the CPC upon the defendant. However, I do not find any illegality or perversity in the order passed in connection with the application under Order XXXIX Rule 7 of the CPC to invoke the provision under Article 227 of the Constitution of India.

In the premise set forth above, the learned Civil Judge (Senior Division), 10th Court, Alipore, South 24-Parganas, is requested to re-hear the application under

Order XXXIX Rule 4 of the CPC according to law after giving an opportunity of hearing to both the parties to the suit. Learned Judge is also requested to dispose of the application under Order XXXIX Rule 4 of the CPC, as expeditiously as possible.

With the above observations, the revisional application, being CO 197 of 2023, stands disposed of.

Let a copy of this order be communicated to the learned Civil Judge (Senior Division), 10th Court, Alipore, South 24-Parganas, forthwith.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)