

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 258 of 2023

Prasanta Maji & Anr.
Vs.
Asit Mondal & Ors.

Mr. Sukanta Das
Mr. Dibashis Basu
Mr. Arun Bandyopadhyay
... For the petitioners

Mr. Arif Ali
... For the opposite party nos.1 to 4

Affidavit of service filed in Court today is taken on record.

In this application the order dated 11th November, 2022 has been challenged whereby the learned Civil Judge (Senior Division), 7th Court, Alipore, allowed an application dated 8th January, 2018 filed by the defendant nos.1 to 4 by accepting the written statement filed on behalf of the defendant nos.1 to 4 on 24th May, 2017.

From the record, it appears that previously on behalf of the petitioners one application under Order VII Rule 11 was filed in the year 2016 and ultimately that was disposed on 10th April, 2017 and on the very next date on behalf of the defendant nos.1 to 4 written statement was filed and one application was also filed on behalf of the defendant nos.1 to 4 on 4th September, 2017 for acceptance of written statement. In the meantime, one

application was taken out on behalf of the plaintiff on 19th July, 2017 for not accepting the written statement and that was heard in presence of both sides and allowed the application, fixing the date for ex parte hearing of the suit. Thereafter, on behalf of the defendant nos.1 to 4, two applications were filed on 8th January, 2018 with a prayer for hearing of the application for acceptance of the written statement filed on 4th September, 2017 and another application for vacating the order dated 17th November, 2017.

Upon all these applications filed on behalf of the defendant nos.1 to 4, the learned Judge passed the impugned order allowing application dated 8th January, 2018 filed on behalf of the defendant nos.1 to 4 by accepting the written statement on the ground of providing opportunity of being heard to the parties for proper adjudication of the suit.

Learned advocate appearing on behalf of the petitioners submitted that the order dated 17th November, 2017 was passed in presence of both sides and the learned Judge passed an order allowing the application for not accepting the written statement filed on behalf of the defendant nos.1 to 4 and after passing this order one application was filed on behalf of the defendant nos.1 to 4 for show cause and vacating the order dated 17th November, 2017. Learned advocate appearing on behalf of the petitioners further submits that when the matter has

already been disposed of by the order dated 17th November, 2017 in presence of both sides which was not being challenged before any higher forum, the learned Judge cannot pass any order allowing the application for vacating the order and by accepting the written statement.

Learned advocate appearing on behalf of the opposite party nos.1 to 4 has submitted that immediately after rejection of the application under Order VII Rule 11 of the Code of Civil Procedure, on behalf of the defendant nos.1 to 4 written statement was filed on the very next date, i.e., on 24th May, 2017 along with an application for acceptance of the written statement which remains pending without adjudication. That is why on behalf of the plaintiffs filed further application for vacating the order dated 17th November, 2017 without disposing the application filed on behalf of the defendant nos.1 to 4 for acceptance of written statement.

On careful perusal of the entire records, I find that the learned Judge ought to have heard the application dated 4th September, 2017 filed on behalf of the defendant nos.1 to 4 for acceptance of written statement which was filed on 24th May, 2017 before disposal of the application dated 19th July, 2017 by the order dated 17th November, 2017. The learned Judge ought to have taken both the applications dated 4th September, 2017 and application dated 19th July, 2017 together for disposal. However, the learned Judge in exercise of his discretionary jurisdiction

accepted the written statement filed on behalf of the defendant nos.1 to 4 for proper adjudication of the suit.

Therefore, I do not find any illegality or infirmity in the order to invoke the provision of Article 227 of the Constitution of India.

In the result, the revisional application, being CO 258 of 2013, fails and stands dismissed.

However, the learned Civil Judge (Senior Division), 7th Court, Alipore, is requested to dispose of the Title Suit No.6 of 2020, as expeditiously as possible.

Let a copy of this order be communicated to the learned Civil Judge (Senior Division), 7th Court, Alipore, 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.)