

7.8.2023
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Ct. no. 652
sb

CO 413 of 2018

Pradip Kumar Pal
Vs.
Smt. Papri Talukdar & Anr.

Mr. Nirmalya Chatterjee ...for the Petitioner

Ms. Sebatee Datta
Ms. Poulami Roy ...for the O.P. no. 1

Affidavit of service filed by the opposite party no 1.
is taken on record.

This is an application under Article 227 of the Constitution of India against the order no. 33 dated 7.12.2017 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 parganas in Title Suit no. 529 of 2012. By the impugned order, the learned court below refused petitioner's prayer to vacate the order of posting the suit in ex parte board.

The petitioner contended that the opposite party no. 1 instituted aforesaid suit for permanent injunction and consequential relief against the petitioner and the opposite party no. 2/defendant no. 1. The petitioner submits that after getting knowledge from opposite party no. 2 herein, he has appeared in the suit. He further submits that present suit is a sham proceeding and no summon was served upon him. After appearance, petitioner reposed full trust upon his advocate-on-record.

As petitioner is a busy businessman, he has no other option but to rely upon his advocate, who assured him to appraise about status of the suit. Suddenly, it has come to their knowledge that the learned advocate for the petitioner did not take any step on behalf of the petitioner on 18.1.2016 and 9.3.2016 and for which learned court below has been pleased to fix the suit in the ex parte board against the defendant no. 2/petitioner herein.

The petitioner immediately after getting knowledge of ex parte hearing of the aforesaid suit, filed an application to recall the order of fixing the suit in ex parte board against the present petitioner and to allow him to contest the suit but the learned court below by the impugned order, was pleased to reject the application filed by the petitioner.

Learned counsel for the petitioner submits that the court below failed to appreciate that no summon has ever been served upon the petitioner and the petitioner after getting knowledge of the present suit from the opposite party no. 2 herein appeared in the suit through his learned advocate-on-record and reposed full trust, faith and confidence on his Advocate. In fact, the petitioner had relied upon assurance given by the learned advocate-on-record but suddenly, he came to know that the concerned learned advocate has not taken any step. He further submits that the petitioner cannot be held responsible for faulty acts of learned advocate-on-record.

The petitioner was all along vigilant and made contact with the lawyer. He further submits that the litigant must not suffer due to the laches on the part of their advocate.

Learned counsel for the opposite party no. 1 submits that the defendant appeared in the aforesaid suit on 31st July, 2015 and since then, he has not filed any written statement and for which the court below was justified in fixing the suit for ex parte hearing against him.

Order IX rule 7 of the Code of Civil Procedure empowers the court to allow the defendant to contest the suit provided defendant assigns “good cause” for his previous non-appearance at or before ex parte hearing. it is worthy to be mentioned that legislature cautiously used the term “good cause” in order IX rule 7, while in order IX rule 9 and order IX, rule 13, they have used the term “sufficient cause”. Obviously requirement of “good cause” is complied with a lesser degree of proof than that of “sufficient cause”. Here explanation given by petitioner appears to be plausible and as such court below ought to have accepted the same. Accordingly, if the opportunity of contesting the suit by filing written statement is given to the petitioner/defendant no. 2 herein, the highest prejudice that will cause to the opposite party/plaintiff, would be that the suit will be disposed of on merit after contested hearing and nothing more.

In such view of the matter, C.O. 413 of 2018 is disposed of giving liberty to the petitioner herein to file written statement before the court below within a period of three weeks from date of communication of the order. On filing such written statement, the court below will vacate the order for ex parte hearing of the suit and will frame issue within a period of three weeks on acceptance of written statement and thereafter will make every endeavour for expeditious disposal of the suit and will conclude the entire proceeding of the suit preferably within a period of eight months thereafter. If the petitioner/defendant no. 2 fails to file written statement within the aforesaid period, the order impugned shall stand affirmed.

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

(Ajoy Kumar Mukherjee, J.)