

19.12.2023
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Ct. no. 652
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**CO 380 of 2021
With
CAN 8 of 2023**

**Yezdezard J. Dastoor
Vs.
Jaju Plastics Pvt. Ltd. & Ors.**

Ms. Bani Ghosh ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. Opposite parties are not represented.

This is an application under Article 227 of the Constitution of India challenging the order dated 22nd January, 2021 passed in Title Suit No.61 of 2014 by the learned Civil Judge, Senior Division, 1st Court, Alipore.

The subject matter of dispute is with regard to a flat being the suit premises which was let out to the father of the defendant. The opposite parties/plaintiffs filed a suit inter alia for recovery of possession and mesne profit against the defendant. During trial, the cross examination of the plaintiff's witness was completed on 25.11.2019 and the defendant's evidence was to be recorded. It is alleged by the petitioner when the petitioner was ready to tender his evidence in chief, the learned court below due to a local Bar resolution had adjourned the matter to 13th January, 2020 for the evidence of the defendants. On 13th January, 2020, the

petitioner was pre-occupied due to his professional reasons and could not appear before the court to adduce evidence and accordingly, sought for an adjournment for fixing another date. The court below fixed the matter on the very next day, i.e. 14th January, 2020 and it is further alleged that on 14th January, 2020 court below closed the evidence. Being aggrieved by that order dated 14th January, 2020 the petitioner herein preferred application before this Court being C.O. 239 of 2020 and this Court while disposing said application by an order dated 22nd January, 2020 gave opportunity to the defendants to adduce evidence on 29th February, 2020. On 29th February, the petitioner filed adjournment application on the ground that he had to go to Mysore for his treatment but court below rejected said application and fixed 17th March, 2020. The petitioner again filed CAN No. 2064 of 2020 for modification of this Court's order dated 22nd January, 2020 and on 12th March, 2020, this Court gave liberty to take plea of ailment before Court below. Thereafter COVID Pandemic started. Thereafter due to wrong entry in the diary petitioner could not attend court on 22nd January, 2021, when the impugned order was passed, ignoring COVID notifications and by the impugned order court below closed evidence of the defendant/petitioner herein and fixed on 22nd January, 2021 for argument. Accordingly, the petitioner has

prayed for setting aside the order impugned and to give an opportunity to the defendants to adduce evidence on their part.

I have gone through the order impugned. Learned court below has recorded that in spite of getting couple of opportunities to adduce their part of evidence, the defendants/petitioners failed to avail the opportunities and as such he has closed the evidence.

Having considered the facts and circumstances of the case as set out above and keeping in view the observations made by Apex Court in different times that so far as practicable, a litigant ought not to be denied a hearing on merit, I am inclined in the present circumstances to allow the petitioner another opportunity to adduce evidence on his part.

In such view of the matter, the impugned order dated 22nd January, 2021 is hereby set aside. Learned court below is directed to give another opportunity to the defendant to adduce evidence on their part and to conclude the same as expeditiously as possible preferably within a period of three months from the date of communication of the order.

The department is directed to send a copy of this order to the learned Civil Judge, Senior Division, 1st Court, Alipore.

C.O. 380 of 2021 is accordingly disposed of. Connected applications also stand disposed of.

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

(Ajoy Kumar Mukherjee, J.)