

S/L 46
20.01.2023
Court. No. 12
Suwayan

CO 693 of 2022

**Sri Rajendra Prasad Shaw & Ors.
Vs.
Sri Omprakash Shah & Anr.**

*Mr. Arnab Roy
Ms. Sayani Ahmed*

...for the petitioners.

Affidavit-of-service as filed today be kept with the record.

Learned Advocate for the petitioners is present.

In spite of service none had appeared on behalf of the opposite parties. Accordingly, the instant revisional application is taken up for hearing in absence of the opposite parties.

In this revisional application the Order No. 8 dated 03.03.2020 as passed by the learned Civil Judge, 2nd Court, Junior Division, Barrackpore, North 24 Parganas in Ejectment Suit No. 18 of 2019 has been assailed.

By the impugned order learned Trial Court accepted the written statement of the defendants and at the same time allowed the *ex parte* vacating petition on consent. At the time of hearing learned Advocate for the plaintiffs/petitioners draws attention of this court to the earlier order, that is, Order No. 7 dated 20.01.2020 as passed by the self-same Court in the self-same suit. It is argued that by the said Order No. 7 learned Trial Court rejected the show-cause petition and the petition for vacating *ex parte* order as filed by the defendants and fixed for 03.03.2020 for *ex parte* hearing of the suit.

It is further submitted that even after passing of the said order learned Trial Court cannot allow self-same petition that is petition for vacating *ex parte* and the said Court cannot accept the written statements as filed by the defendants. It is further argued that learned Trial Court wrongly recorded the words 'on consent' in the impugned order.

Perused the impugned Order No. 8 as well as Order No. 7 as passed in Ejectment Suit No. 18 of 2019. On perusal of Order No. 7 dated 20.01.2020 it appears to me that learned Trial Court rejected the show-cause petition and the prayer for vacating *ex parte* order as filed by the defendants basically on the ground that on the said date, that is, on 21.01.2020 no written statements have been filed by the defendants. However, on 03.03.2020 the self-same Court by the impugned order allowed similar such prayers of the defendants since the defendants have filed their written statements. Whether the impugned order was passed on contest or consent cannot be adjudicated at this stage, however, in considered view of this Court, this Court finds no illegality or irregularity of the order impugned in allowing the defendants of Ejectment Suit No. 18 of 2019 to file their written statements and accepting the same on record. However, this Court considers that for the delayed filing of the written statement, learned Trial Court ought to have imposed some cost upon the defendants prior to acceptance of the written statements.

In view of such, this Court finds no merit in this instant revisional application and accordingly the instant revisional application is hereby dismissed.

The impugned Order No. 8 dated 03.03.2020 as passed by the learned Civil Judge, 2nd Court, Junior Division, Barrackpore, North 24 Parganas in Ejectment Suit No. 18 of 2019 is hereby affirmed.

It is further directed that the learned Trial Court within 30 days from the date of communication of this order shall frame issues in the said suit and thereafter shall fix a date for peremptory hearing of the said suit within 30 days from the date of framing of such issue. It is made clear that the time limit as fixed by this Court is mandatory.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)