

S/L 21
17.02.2023
Court. No. 12
Sourav

CO 865 of 2019

**Om Prakash Gupta & Ors.
Vs.
Smt. Shyamoli Banerjee & Ors.**

*Mr. Tanoy Chakraborty
Mr. Chhandak Dutta*

...for the petitioners.

*Mr. Debanik Banerjee
Mr. Nilanjan Bhattacharya
Mr. Aniruddha Ganguly*

...for the opposite parties.

Both the parties are represented by their respective learned advocates.

Heard learned advocates for the defendants/petitioners and the plaintiffs/opposite parties at length.

The instant matter is now taken up for passing appropriate order.

The revisionists before this Court are aggrieved with the order dated 04.12.2018 as passed by the learned Civil Judge (Junior Division), 4th Court at Alipore in Ejectment Suit No. 440 of 2009 whereby and whereunder the said court allowed the petition for substitution as filed under Order 22 Rule 3 of the Code of Civil Procedure on contest.

The defendants felt aggrieved and thus, approached this Court by filing the instant application under Article 227 of the Constitution of India.

In support of the instant revisional application, learned advocate for the defendants/revisionists draws attention of this Court to the Order No. 37 dated 12.07.2018

as passed by the learned trial court in the self-same suit. It is submitted that from Order No. 37, it would reveal that a similar petition was rejected by the learned trial court. It is argued that while passing the impugned order, learned trial court probably overlooked that he had dismissed the self same application on 12.07.2018 vide Order No. 37. It is thus contended that a serious miscarriage of justice has occurred while passing the impugned order without recalling the order No. 37 dated 12.07.2018 as passed in the said suit.

Per contra, learned advocate for the plaintiffs/opposite parties submits before this Court that since the prior application for substitution was not disposed of on merit and rather since the same was dismissed for default practically, there cannot be any embargo in entertaining the application for substitution.

On perusal of the impugned order vis-à-vis the previous orders i.e., Order No. 37, Order No. 38 and Order No. 39 as passed in Ejectment Suit No. 440 of 2009, it reveals that admittedly the learned trial court on 12.07.2018 vide Order No. 37 dismissed the petition for substitution for default, however, on the next date vide Order No. 38 dated 09.10.2018 again fixed a date for hearing of the petition for substitution on filing of a net copy of an order of the Hon'ble Court (which, however, has not been annexed with the instant revisional application).

On perusal of the entire materials as placed before this Court and after hearing the learned advocates for both the parties, it reveals to this Court that admittedly there occurred some irregularity on the part of the learned trial

court to entertain the petition for substitution on 04.12.2018 without recalling its earlier order dated 12.07.2018, however, on perusal of the certified copy of the impugned order, it does not transpire to this Court that a serious miscarriage of justice has been occurred on account of the procedural laches on the part of the learned trial court for which the present revisionists/defendants had suffered irreparable loss and injury.

In view of such, this Court in exercise of its plenary power regularize the irregularity as committed by learned trial court with a caution to him to remain vigilant in future in the process of dispensation of justice.

With the aforementioned observation, the instant revisional application being **CO 865 of 2019** is hereby dismissed. The impugned Order No. 37 dated 12.07.2018 as passed by the learned Civil Judge (Junior Division), 4th Court at Alipore in Ejectment Suit No. 440 of 2009 is hereby affirmed.

Learned Registrar, Judicial Service, High Court at Calcutta is hereby requested to communicate this order to the learned Judicial officer wherever he is posted now.

Parties to act on the server copy of this order.

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

(Partha Sarathi Sen, J.)