

29.9.2023
159
Ct. no. 652
sb

C.O. 1437 of 2019

Mukul Koley & Ors.
Vs.
Sri Sanat Kumar Koley, since deceased, rep. by
Smt. Lakshmi Koley & ors.

Mr. Shyamal Chakrabortyfor the Petitioners

Mr. Anubrata Santra
Mr. Anit Kr. Das ...for the Opposite parties

Being aggrieved by order no. 112 dated 16.1.2019 and order no. 115 dated 8.3.2019 passed by the learned Civil Judge, Junior Division, 4th Court, Serampore in Title Suit no. 41 of 2015, present application under Article 227 of the Constitution of India has been preferred. By the impugned order, the learned court below was pleased to reject the defendant's prayer for setting aside the order for fixing the suit in ex parte board.

The petitioners contended that the opposite party nos. 1 and 2 herein as plaintiffs filed aforesaid suit against the predecessor of defendants, Krishnalal Koley who after receipt of summons appeared in the said suit and filed written statement denying allegations made in the plaint. During pendency of the suit, the said Krishnalal died and his legal heirs including present petitioners were substituted. On 2.8.2017, the

substituted defendants appeared and prayed for time to file written statement and 4.9.2017 was fixed as next date for filing written statement by the defendants. On that date, the petitioners herein again filed adjournment application for filing written statement but the learned counsel for the defendants were engaged in another court and could not move the adjournment application, for which the learned court was pleased to fix the suit for ex parte hearing. On 8.2.2018, the petitioners filed written statement and the learned court below accepted the written statement subject to payment of cost of Rs. 500/-. According to the petitioners, the direction about payment of cost was not duly communicated and they could not follow such direction and as such the court below again posted the suit for ex parte hearing for non-payment of cost. Thereafter, the petitioner again filed another application on 30th November, 2018 for setting aside the order for fixing the suit in ex parte board but such application was also not allowed on the ground that all the defendants have not signed in the aforesaid petition. Thereafter on 26.2.2019, petitioners filed another application for recalling the order, explaining the reasons for which they could not pay the cost but said application was also rejected.

Being aggrieved by that order, learned counsel for the petitioners submits that they are ready and willing to pay the cost that was imposed by the court below but

they should get an opportunity to contest the suit. He further submits that due to mis-communication of order regarding payment of cost, the impugned orders were passed, which is drastic and too much harsh for the petitioners and it has practically non-suited the petitioners at the initial stage of the suit for no fault of their own.

Having considered the facts and circumstances of the case, C.O. 1437 of 2019 is hereby disposed of with a direction upon the petitioners to deposit cost of Rs. 1000/- before the court below within a period of two weeks from the date of communication of the order. In the event of filing such cost, further liberty is given to the petitioners to file fresh application duly signed by the signatories of the written statement with a prayer to recall the order of hearing the suit ex parte and in the event of filing such application within two weeks thereafter, the court below will consider such application in accordance with law.

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.)