

Item No. 7
03.07.2023
Court. No. 19
GB

C.O. 1378 of 2023

Sri Vidyananda Chakraborty
Vs.
Sri Bachhu Dey

Mr. Vidyananda Chakraborty

... Petitioner (In-person).

*Mr. Satadeep Bhattacharya,
Ms. I. Hassan,
Mr. Sanket Sarangi*

...for the Opposite Party.

The petitioner is the plaintiff in Ejectment Sit No.45 of 2012. The petitioner is aggrieved by an order passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta dated August 16, 2022. By the said order the learned court 'rejected' an application under Order 6, Rule 17 of the Code of Civil Procedure.

It appears that August 16, 2022 was fixed for hearing of the application for amendment of the plaint. As none appeared on behalf of the plaintiff on repeated calls even at 2 p.m., the application was 'rejected'.

Mr. Bhattacharya, learned advocate for the defendant submits that the proper course of action for the petitioner would be to pray for restoration of the said application as the rejection was on the ground that the plaintiff did not appear. The rejection was not on merits.

This Court is not impressed with Mr. Bhattacharya's submission for the following reasons:-

- a) The expression 'rejected' cannot be synonymous to the expression 'dismissed for default'.

- b) Mr. Bhattacharya's contention would have been acceptable had the court dismissed the application for default on the ground of non-appearance of the plaintiff.
- c) Due to non-appearance of the plaintiff, the application under Order 6, Rule 17 of the Code was rejected.
- d) The expression 'rejection' has a far reaching connotation. Rejection is usually on merits. When none appears to press an application, the court may dismiss for default.

The learned court ought to have chosen the word carefully while rejecting the application under Order 6, Rule 17 of the Code. An order cannot be read as a statute and hence, the expression 'rejected' cannot be presumed to mean dismissed for default. The order impugned dated August 16, 2022, is set aside.

The learned court below is directed to rehear the application under Order 6, Rule 17 of the Code within two months from the next date fixed. Objection to the same, if not filed, shall be filed within ten days from date.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)