

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1412 of 2023

NKS Project Private Limited & Ors.
Vs.
M/s. Leonine Estates Pvt. Ltd. & Ors.

Mr. Sanjoy Bose
Mr. P.B. Mallick
Mr. Sujay Kumar Nath
... For the petitioners/defendant nos.2 to 7

Mr. Srijib Chakraborty
Mr. Bimalendu Das
Mr. Aditya Mondal
Mr. Shomrik Das
... For the opposite party nos.1 to 12

This revisional application has been filed assailing the order dated 3rd April, 2023 passed in connection with Title Suit No.1213 of 2022 by the learned Civil Judge (Senior Division), 4th Court, Alipore, South 24-Parganas.

Learned advocate appearing on behalf of the petitioners submitted that on 24th February, 2023 learned advocate appearing on behalf of the defendant nos.2 to 7 was absent and, as such, the defendants were directed to show cause why the petition under Order 7 Rule 11 of the Code of Civil Procedure which was fixed for hearing, should not be rejected, and the date was fixed on 3rd April, 2023. On 3rd April, 2023, show cause petition was filed on behalf of the defendant nos.2 to 7 but the grounds assigned in the show cause petition were not

satisfied to the learned Judge and accordingly show cause was rejected and suit was directed to proceed ex parte against the defendant nos.1 to 7.

Learned advocate appearing on behalf of the plaintiffs/opposite parties has submitted that on the day of filing show cause, defendants submitted two show cause petitions assigning different reasons and those reasons being not satisfactory, the learned Trial Judge rejected the petitions. However, learned advocate appearing on behalf of the plaintiffs/opposite parties, in his usual fairness, could not deny the right of being heard.

On careful perusal of the order impugned as well as the order dated 24th February, 2023, I find that date was fixed for hearing of the application under Order 7 Rule 11 of the Code of Civil Procedure, the defendant nos.2 to 7 did not appear and filed show cause on behalf of the defendant nos.2 to 7 which was rejected due to lack of reasons assigned in the show cause petitions.

On careful perusal of the reasons assigned in the two applications for show cause, I am also not satisfied with the reasons for not appearing on 24th February, 2023. I am also not unmindful as to the rights of opportunity of being heard.

Considering all the facts and circumstances as discussed above, I am of the humble view that an

opportunity should be given to the defendant nos.2 to 7 to participate in the proceeding, particularly, the hearing of the application under Order 7 Rule 11 of the Code of Civil Procedure subject to payment of cost.

The show cause petitions submitted before the learned Trial Judge are allowed, subject to payment of costs of Rs.10,000/- to be paid to the Calcutta High Court Legal Services Committee within seven days after the ensuing summer vacation.

Learned Civil Judge (Senior Division), 4th Court, Alipore, South 24-Parganas, is requested to hear the application under Order 7 Rule 11 of the Code of Civil Procedure at the first instance fixing a date after the ensuing summer vacation. Till then, the ad interim order already passed in the suit be extended. Learned Judge is also requested not to entertain any adjournment application filed any of the parties to the suit.

From the record, it appears that the defendant no.1 neither appeared on 24th February, 2023 nor appeared on 3rd April, 2023, far to speak of filing any show cause application.

However, I am not interfering with the order directing the suit to be proceeded ex parte against the defendant no.1.

Other portion of the order dated 3rd April, 2023 stands set aside.

With the aforesaid observation, the revisional application, being CO 1412 of 2023, stands disposed of.

Learned advocates appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Civil Judge (Senior Division), 4th Court, Alipore, South 24-Parganas, forthwith.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)