

14.12.2023
Sl. No.13(DL)
srm

C.O. No. 1443 of 2023

Samir Ghosh

Versus

Sri Pratap Ghosh & Anr.

Mr. Mahendra Gupta,
Mr. Ayan Mitra

...for the Petitioner.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya,
Ms. Srinjini Chakraborty,
Ms. Priyanka Jana

...for the Opposite Parties.

The petitioner is the plaintiff in Title Suit No.32 of 2013.

The petitioner has challenged the order dated April 1, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Howrah, in Misc. Case No.02 of 2014.

Misc. Case No. 02 of 2014 is an application under Order XXXIX Rule 2A of the Code of Civil Procedure filed by the plaintiff. The defendants filed a written objection to the said misc. case. The defendants wanted to amend the objection. Accordingly, the court allowed such amendment, upon payment of cost of Rs.2,000/-. The order allowing the amendment was passed on November 16, 2019. The court had

imposed cost, which was payable within December 7, 2019. On December 7, 2019, the defendants filed an application before the learned court, praying for liberty to deposit the cost by way of challan, in court. It was alleged that when the defendants wanted to serve a copy of the amended written objection and pay the cost to the learned Advocate-on-record for the plaintiff, the same was refused.

During the intervening period, the said application could not be taken up and the defendants failed to deposit the cost. In the meantime, the order allowing amendment was challenged by the plaintiff, by filing a civil revisional application, which is pending adjudication before another learned coordinate Bench.

Mr. Gupta, learned Advocate appearing on behalf of the plaintiff, challenges the order impugned, on the following grounds:

- (a) Extension of time to deposit cost of Rs.2,000/- was without jurisdiction, as the order itself was under challenge before this Court.
- (b) The plaintiff did not get a chance to oppose the application for extension of time to deposit the cost filed by the defendant.

(c) Imposition of cost was a part of the order which was under challenge in the civil revisional application before another learned coordinate Bench and the order impugned would amount to interfering with the course of justice.

(d) That the order allowing deposit of cost, would have a persuasive value on the Hon'ble Judge who would be hearing the civil revisional application.

Mr. Mukherjee, learned Advocate appearing on behalf of the opposite parties/defendants, submits that the cost was attempted to be paid to the learned Advocate-on-record. The same was not accepted. Accordingly, an application was filed on the date within which the cost was supposed to be paid. Due to the intervening pandemic, the courts were not functioning and the application remained pending in the records.

Upon coming to know about the pendency of the civil revisional application, Mr. Mukherjee mentioned the matter before the learned coordinate Bench. Showing the pendency of the revisional application, the plaintiff in the suit prayed for repeated adjournments. The application was kept pending. Upon mentioning, the matter was listed and a direction for service of the application was passed by the learned coordinate

Bench. At such juncture, the defendants filed a put up petition before the learned court below and prayed for hearing of the application, seeking liberty to deposit the cost. On the basis of the application filed on December 7, 2019, the learned court found that the reasons assigned by the defendants, in not being able to deposit the cost of Rs.2000/-, to be genuine. Being satisfied with the explanation, the learned court allowed such cost to be deposited belatedly.

The cost was imposed by the said court, while allowing the amendment application. The quantum of cost and factum of imposition of cost, were within the discretion of the learned court.

Thus, the learned court had two options. Either, not to accept the amended written objection due to non-compliance or to allow the belated deposit of cost and grant extension of time to pay cost. It was entirely the discretion of the learned court. This Court, under Article 227 of the Constitution of India, is not to sit over a discretionary order. It was the court's view that the cost which had been imposed, could not be deposited on time, due to sufficient reasons. There was no intentional non-compliance.

The order impugned is not an erroneous exercise of jurisdiction. It is neither perverse nor based on extraneous consideration. The learned Court has exercised its discretion.

Moreover, Mr. Gupta's contention that the learned coordinate Bench, which will hear the revisional application arising out of the order of amendment, would be persuaded to hold in favour of such amendment, is totally incorrect. Cost is not a consequential relief and the merits of the revisional application will not be dependent on the fact that the defendants were allowed to deposit the cost. If Mr. Gupta's client is successful in the revisional application, the order itself will go and the payment of cost will have no significance at all.

Accordingly, the revisional application is dismissed.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)