

August 2, 2023
Sl. No.5
Court No.19
s.biswas

CO 1529 of 2022
With
CAN 3 of 2023

Satyabrata Seal and another
vs.
Madan Mohan Seal and another

Ms. Shohini Chakrabarty
Mr. Goutam Acharya
Mr. Gourab Ghosh

... for the petitioners

Mr. Syed Mansur Ali
Mr. Subhra Sundar Mukhopadhyay
Mr. Subhrangshu Nath Sarkar

... for the opposite parties

Affidavit of service filed by the petitioners is taken on record.

This revisional application has been filed challenging an order dated March 30, 2022 passed by the learned Additional District Judge, 1st Court, Sealdah, South 24 Parganas in Miscellaneous Appeal No.40 of 2021. By the said order, the learned lower appellate court upheld the order dated April 7, 2021 passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah, in Miscellaneous Case No.34 of 2019.

The Miscellaneous Case No.34 of 2019 was an application under Order 9 Rule 13 of the Code of Civil Procedure arising out of Title Suit No.123 of 2016.

Both the learned courts below found that the summons had been duly served upon the defendants in the suit. Hence, the suit was rightly fixed for ex

parte hearing when the defendants did not contest before the learned trial judge.

Learned advocate for the opposite parties/plaintiffs relies on the cross-examination of both the defendants. It was specifically stated in the cross-examination by the defendants that one Smt. Rakhi Seal, wife of Satyabrata Seal had accepted the summons on behalf of both the defendants. The signature of Rakhi Seal was available on the AD card, which was shown to the witnesses. The witnesses identified such signature.

Under such circumstances, the courts were not wrong in holding that despite receipt of summons, the defendants failed and neglected to take steps in the suit and the suit was rightly decreed ex parte.

The revisional application has been filed before this court on the ground that the procedure prescribed under the Code of Civil Procedure was not followed, inasmuch as, Rakhi Seal could not have been treated as agent of the defendant No.2 insofar as, service of summons was concerned.

According to the petitioners, the summons ought to have been served upon the parties contesting the suit or upon their authorized agent. It is further submitted that only two dates had been fixed by the learned trial judge and thereafter the learned trial judge decreed the suit without giving

adequate opportunity to the defendants to contest the same.

The wife of the elder brother could not have accepted the summons on behalf of the younger brother, i.e., the petitioner no.2.

However, for the ends of justice, the power of this court under Article 227 of the Constitution of India is invoked in order to allow one last chance to the defendants to contest the suit, by filing the written statement.

It appears from the entire order-sheet which has been produced before this court that Title Suit No.123 of 2016 proceeded in hot haste. Prior to August 17, 2018, six dates were fixed for SR. On August 17, 2018, AD cards in respect of service upon the defendant nos.1 and 2 returned and the service was found to be complete. The matter was fixed on September 18, 2018 for appearance and for further orders. On the next day, i.e., on September 19, 2018 the defendants did not appear and the suit was fixed for ex parte hearing on November 15, 2018. On November 15, 2018, the plaintiff filed examination in chief, with documents. Sanjib Dutta PW 1 was present and his evidence was recorded in full. He was discharged. The documents were also marked as Exhibits 1 to 4. On the verbal prayer of the plaintiff, the evidence of the plaintiff was closed and

January 7, 2019 was fixed for ex parte argument. On December 11, 2018, the plaintiff withdrew one of the exhibits. On January 7, 2019 the suit was heard and decreed ex parte against Satyabrata Seal. Satyabrata Seal was directed to deliver the vacant possession to the plaintiff within 30 days from the said judgment. The order of learned trial judge suffers from certain irregularities. Upon recording completion of service, on the very next day, the suit was fixed for ex parte hearing. On the following day, the evidence was closed and on the fourth day, the suit was decreed. Although there were two defendants admittedly parties to the suit, the suit was decreed against only one. The defendant no.2 Debabrata Seal, did not suffer decree.

Under such circumstances, this court is of the view that a chance should be given to the defendants to contest the suit. However, for the delay caused, the cost of Rs.50,000/- shall be paid to the plaintiff within three weeks from date.

The defendants shall file their written statement within four weeks from date. The learned Civil Judge (Junior Division), 1st Court, Sealdah shall accept the written statement of the defendants, upon being satisfied that the cost of Rs.50,000/- has been paid to the plaintiffs within the time frame fixed by this court. Thereafter, the suit shall proceed in

accordance with law and shall be disposed of within a year from completion of pleadings.

The orders impugned are set aside. The suit shall be heard afresh.

The revisional application is thus disposed of.

Original copy of CAN 3 of 2023 is not available with the records, for the change of determination. However, photocopy of the same is treated to be original on the consent of the parties.

CAN 3 of 2023 is an application for vacating the interim order passed by this court on an earlier occasion. As the revisional application is disposed of, CAN 3 of 2023 has become infructuous.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)