

10.10. 2023
item No.165
n.b.
ct. no. 652

C.O. 2540 of 2019

Narayan Chandra Gorai
Vs.
Sushanta Das

Mr. Kartick Kumar Bhattacharya,
..... for the petitioner.
Mr. Suman Chattopadhyay,
..... the opposite party.

Challenging the order dated 25.7.2018 and 8.4.2019 passed by the Learned Civil Judge, 10th Court, Senior Division, Alipore in Money Suit No.34 of 2016 Present Application under article 227 of the constitution of India has been preferred.

Petitioner's case is that the opposite party being plaintiff filed aforesaid Money Suit praying for a decree for realization of money of Rs.7,50,000/- from the defendant/petitioner herein. The petitioner as defendant filed written statement denying all materials allegation on 4.4.2018 along with copy of the same. Next date i.e. 3.6.2018 was fixed for serving copy of the written statement by the defendant to the plaintiff and it also appears from the order that the copy of written statement is lying with the record. Learned Court below on 28.6.2018 observed that the copy of the written statement has not yet been served upon the plaintiff and as such the plaintiff was directed to file show-cause as to why the defence shall not be struck off for non-compliance of the

Court's order and fixed the next date on July 25, 2018. On that date the defence of the defendant was struck off by the court below for non-service of copy upon plaintiff and also for non-compliance of Court's order and accordingly issues have been framed and the suit is posted for peremptory hearing.

Learned advocate on behalf of the petitioner submits that the court below erroneously disallowed the cause shown in the petition without assigning any reason and ultimately struck off the defence of the defendant. Learned Court below had acted beyond jurisdiction and as such, the order impugned is liable to be set aside.

Mr. Suman Chattopadhyay, learned advocate appearing on behalf of the opposite party raised strong objection contending that in spite of getting opportunity to file show cause, the defendant failed to show proper cause and as such violated the order of the Court and for which the court below rightly struck off the defence. The order impugned is justified and does not call for interfere

I have considered the submissions made by the parties. It appears from the certified copy of order that 4.4.2018 was fixed for filing written statement by the defendant and on that date the defendant filed written statement along with a copy of written statement. Aforesaid order shows that it was within the knowledge of the Court that copy of written statement is lying with the case record.

Having considered the facts and circumstances of the case and the submission made by both the parties, it appears when the copy of the written statement is lying with the record, court below ought to have asked the plaintiff to take the copy of the written statement from the record after making proper endorsement and instead of that, without having any reason, he has asked the defendant to file show-cause which appears to me is a perverse order, which could have easily avoided by permitting the plaintiff to take the copy of written statement from the record and to make an endeavour for expeditious disposal of the suit. In such view of the matter, the orders impugned dated 25.7.2018 and 8.4.2019 are hereby set aside.

The plaintiff is directed to take the copy of the written statement from the case record within two weeks after reopening of Puja Vacation on proper acknowledgement.

The Court below is directed to frame issue on the basis of the pleadings submitted by the parties within a period of four weeks after reopening of Puja Vacation and to make every endeavor for disposal of the entire suit within the period of six months from the date of framing of the issues.

Accordingly C.O. 2540 of 2019 is disposed of.

Connected applications, if any, are also disposed of.

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

(Ajoy Kumar Mukherjee, J.)