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28.11.2023
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 2392 of 2023

Raj Sekhar Dhara
-versus-
Smt. Anjali Rani Dhara & ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Ms. Sinjini Charkaborty,
... for the petitioner/plaintiff.

Mr. Tathagata Majumdar,
Ms. Neha Chakraborty,
...for the opposite party nos. 1, 6, 7 & 8.

Affidavit of service filed on behalf of the petitioner be
kept with the record.

The revisional application under Article 227 of the
Constitution of India is at the instance of the plaintiff in a suit
for declaration of title and injunction and is directed against
the order no. 105 dated July 05, 2023 passed by the 2nd Court
of learned Civil Judge (Senior Division), Hooghly in Title
Suit No. 380 of 2014.

The learned Trial Judge by the order impugned has
allowed the prayer of the defendant no.1 to take off the suit
from the ex-parte Board and has extended the time to deposit
the costs of Rs. 500/- fixed earlier as the condition for
recalling of the order fixing the suit for ex-parte hearing
against some of the defendants.

The plaintiff is aggrieved by the said order as according
to him, some of the defendants due to their persistent laches

and non-compliance of the earlier orders passed in the suit, are not entitled to contest the suit.

It appears from the record that for the default of some of the defendants, on number of occasions, the suit was fixed for ex-parte hearing against some of the defendants and one of such orders was recalled vide order no. 72 dated July 06, 2019 subject to payment of costs of Rs. 500/-. The defendants failed to comply with said condition, in consequence, the suit was again posted for ex-parte hearing vide order no. 74 dated November 30, 2019.

The defendant no. 1 on March 03, 2023 filed an application under Section 151 of the Code of Civil Procedure for recall of the orders fixing the suit for ex-parte hearing against her and for the leave to contest the suit.

The learned Trial Judge by the order impugned has allowed the said application, holding inter alia that the doctrine of *Audi Alterem Partem* and the age of the defendant no. 1 demand that she should be allowed to contest the suit.

The record demonstrates laches on the part of the defendants against whom the suit is running ex-parte as such to get the leave to contest it, the said defendants are required to prove that they were prevented by sufficient cause from appearing before the Court below and/or taking steps when the suit was posted for ex-parte hearing. Neither the general doctrine of *Audi Alterem Partem* nor sympathy can overreach the statutory requirements of Order IX Rule 7 of the Code.

The exercise in the aforementioned direction since has not been carried out, the order impugned is set aside. The

learned Trial Judge is directed to decide the said application afresh upon thorough scrutiny of the records.

This Court is informed that the December 01, 2023 is the next date fixed in the suit. The learned Trial Judge is requested to decide the said application within ten days from the said date fixed without granting any unnecessary adjournment to either of the parties.

In view of the above, CO 2392 of 2023 is **allowed** with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

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

(Biswajit Basu, J.)