

24.3.2023
93
Ct. no. 652
sb

CO 2017 of 2021

**Subal Arakushi & ors.
Vs.
Julfikar Mondal**

Mr. Asit Kr. Bhattacharya
Ms. Mousumi Biswas ...for the petitioners

Affidavit of service filed by the petitioners is taken on record. In spite of service, opposite party is not represented.

Being aggrieved and dissatisfied with the order no. 10 dated 30.6.2021 passed by the learned Civil Judge, (Junior Division), 2nd Court, Basirhat in Title Suit no. 195 of 2020, the present application under Article 227 of the Constitution of India has been preferred.

The petitioners contended that the opposite party herein filed aforesaid suit for permanent injunction against the petitioners herein and the petitioners herein entered appearance in the said suit and filed written statement denying all material allegations. The petitioners herein in the said suit, filed an application for stay of the aforesaid suit till the disposal of the second appeal being no. SA 58 of 1998, which is still pending before this court. The petitioner contended in the said stay application under Section 10 of the Code of Civil Procedure that the issue involved in the present suit is

directly and substantially in issue in that previously instituted suit in connection of which the said second appeal being SA 58 of 1998 is pending before this court.

However, on perusal of the order impugned dated 30th June, 2021, it appears that the court below was pleased to reject prayer for stay in the pending suit on the ground that no particular document from the side of the defendants/petitioners herein showing that the matter in issue in the previously instituted suit and the matter in issue involved in the present suit are directly and substantially same and there is also no other material on record to indicate the same. In the court below, the defendants/petitioners herein only filed information slip in connection with the second appeal from which it was not possible for the court below to come to a conclusion that the issue involved in the earlier suit and the issue involved in the present suit are directly and substantially the same. Defendants/petitioners also failed to establish by that document that the parties to both the suits are same in respect of matter in issue. Defendants also have not filed relevant documents of second appeal to show that subject matter of both the suits are same.

In view of the above, C.O. 2017 of 2021 is disposed of with a direction upon the defendants/petitioners to file relevant documents including documents in connection with SA 58 of 1998 before the court below within a period of eight weeks from date of communication of the order to

to substantiate their claim that the matter in issue involved in the earlier instituted suit in connection with SA 58 of 1998 are directly and substantially in issue in the instant suit and in the event of filing such relevant documents by the defendants/petitioner's in support of their contention, the court below will dispose of the defendants/petitioner's application under Section 10 of the Code of Civil Procedure afresh without being influenced by any observations made in this order. in the event of non-filing of relevant documents in support of petitioner's contention within the stipulated period, the order impugned shall stand affirmed.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)