

30.01.2023
SL No.18
Court No.8
(gc)

**FAT 220 of 2022
CAN 1 of 2022**

**Subhasree Paul (Chakraborty)
Vs.
Avijit Paul**

Mr. Jayanta Samanta,
Mr. Karunamoyee Samanta,
...for the Appellant.
Mr. Sandip Ghosh,
Mr. Sudarsan Roy,
...for the Respondent.

The appeal and the application are taken up together and disposed of by this common order.

The appeal is directed against the ex parte decree dated 24th June, 2022. It appears from the impugned order that on 24th June, 2022, a petition was filed on behalf of the appellant praying for setting aside the ex parte hearing on the ground that on the previous occasion due to wrong posting of diary of the learned Advocate, step could not be taken on behalf of the respondent. The learned Trial Judge without dismissing the said petition on the ground that the respondent has adopted a dilatory tactics, proceed with the suit ex parte.

We do not want to make any comment on the merits of the matter, however, having regard to the fact that the respondent was represented, a time ought to have been given to the respondent to file the written statement. While appreciating the anxiety expressed by the learned Additional District Judge, Fast Track Court No.2,

Barrackpore, North 24-Parganas, we feel that for the ends of justice, an opportunity ought to have been given to the appellant might be on terms to contest the proceeding.

The respondent is directed to file written statement in the Court below within two weeks from date, in default, the decree shall revive. In the event the written statement is filed within the aforesaid period, the learned Additional District Judge, Fast Track Court No.2, Barrackpore, North 24-Parganas shall pass peremptory directions with regard to the procedural matters which shall be scrupulously followed by the parties, in default, it would be open for the learned Trial Judge to proceed with the matter in the manner the Court thinks fit.

The appeal and the application are, accordingly, disposed of.

The impugned order is set aside.

However, we make it clear that we have not gone into the merits of the judgment.

All questions are left open.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)