

10.04.2024
S/L. No. 4
Court No. 3
Suvayan/
Sourav

**FAT 436 of 2019
With
CAN 2 of 2023
With
CAN 3 of 2023
Smt. Chhanda Das
Vs.
Sri Susanta Kumar Chandra & Ors.**

Mr. Somnath Gangopadhyay

...for the appellant.

In Re: CAN 3 of 2023

1. Heard learned Counsel for the appellant/petitioner.
2. Affidavit-of-service filed by learned Counsel for the appellant/petitioner be taken on record.
3. None appears for the respondents.
4. Having heard the learned Counsel for the appellant/petitioner, we are satisfied about the cause of his non-appearance on 20.09.2023.
5. Accordingly, the order dated 20.09.2023 is recalled and the appeal is restored to file along with interim order/orders, if any and interim application/applications, if any.
6. Accordingly, the interim application being CAN 3 of 2023 is disposed of.

In Re: FAT 436 of 2019 with CAN 2 of 2023

1. Though the matter is listed under the heading "To Be Mentioned" and affidavit-of-service has been filed by learned Counsel for the appellant, none has appeared today for the respondents.

2. The suit by the plaintiff/appellant was filed for specific performance of contract.
3. The Counsel for the appellant did not appear on the date the suit was posted for argument.
4. On the scrutiny of record learned court below found that the agreement for specific performance of contract has been inadequately stamped and the requisite stamp fees of Rs. 1,23,697/- was not paid. On the said ground alone the court below dismissed the suit and accordingly recorded decree of dismissal.
5. The appellant preferred appeal. On the basis of the order passed by co-ordinate Bench the petitioner/appellant is stated to have deposited stamp duty to the tune of Rs. 3,28,084/- being the stamp duty with penalty with the competent authority in respect of the agreement dated 28.03.1999. The Collector of Stamp Revenue, Kolkata vide his letter dated 12.08.2022 Annexure-F to CAN 2 of 2023 communicated to the Registrar, High Court, Original Side that the plaintiff/appellant has filed the requisite stamp duty Rs. 3,28,084/- on 03.08.2022. The certified copy of agreement for sale after payment of requisite stamp duty has also been issued.
6. In view of such fact and taking into consideration the hardship the plaintiff has

faced for about five years in the appeal, we take a lenient view and remand the matter to the learned Judge, 13th Bench, City Civil Court at Calcutta for taking up the suit from the stage it was dismissed. If it is required for the plaintiff to prove the payment of adequate stamp duty, etc. evidence to that effect may be recorded by the learned court below otherwise the letter of the Collector being an official communication and relevant under Section 35 of the Evidence Act is to be taken into consideration for the said purpose.

7. The Registrar, Original Side is directed to send the communication received by her from the office of the Collector of Stamp Revenue, Kolkata along with original agreement for sale dated 28.03.1999 and the certified copy thereof to the court below.
8. With the aforesaid observation, the appeal being FAT 436 of 2019 is allowed and the interim application being CAN 2 of 2023 is also disposed of.
9. The impugned order is set aside and the matter is remanded to the court below.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)