

18.04.2023
ct. no. 654
sl. No. 2
SS

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2910 of 2022

**Bhim Sankar Tewary
versus
Smt. Nirmala Sinha & ors.**

Mr. Aniruddha Chatterjee
Mr. Abir Lal Chakraborty
... for the petitioner

Mr. Asit Baran Raut
Mr. Tuhin Subhra Raut
Ms. Ishita Raut
... for the opposite party no.1

Mr. Avirup Chatterjee
... for the opposite party no.10

This revisional application has been filed by the petitioner-defendant no.4 under Article 227 of the Constitution of India challenging the order dated 17th August, 2022 passed by the learned Judge, XIII Bench City Civil Court at Calcutta in Title Suit No.386 of 2002.

The brief fact of the case is that the plaintiff filed a suit for declaration and permanent injunction being Title Suit No.386 of 2002 against the petitioner-defendant no.4 and others. The summons sent to the petitioner was returned with endorsement "*Not claimed*". Subsequent thereto, the petitioner-defendant no.4 filed application under Section 151 of the Code of Civil Procedure seeking permission to contest the suit at the

stage of argument. Such application was rejected by the learned Trial Court. Hence, this revision.

Mr. Aniruddha Chatterjee, learned Advocate for the petitioner-defendant no.4 submits that although the postal authority endorsed on the summons that it was “*Not claimed*”, however, there is nothing in the report that attempts were made to effect service. Accordingly, the petitioner did not have the knowledge that the suit has been initiated against him by the plaintiff. As soon as the petitioner-defendant no.4 got knowledge of the suit, the application seeking permission to contest the suit was filed. There was no such intentional laches on the part of the petitioner in order to contest the suit. He seeks liberty to file written statement in the suit to contest the same.

In reply to the contentions raised on behalf of the petitioner-defendant no.4, Mr. Asit Baran Raut, learned Advocate for the opposite party no.1 submits that the plaintiff and the defendants are all brothers and sisters and they reside in the same premises and therefore, the contention of defendant no.4 of not having knowledge of the suit cannot be accepted. He further submits that the learned Trial Judge considering that the summons having “*Not claimed*” rejected the application of defendant no.4 for contesting the suit, which does not call for interference. He submits for dismissal of the revisional application.

Admittedly, the plaintiff and the defendants are the brothers and sisters and the defendants reside in the same premises. The plaintiff has filed the suit in the year 2002 for getting 1/6th share of the compensation in respect of the land acquired by the C.E.S.C. Limited. It is pertinent to note that after 20 years, the petitioner-defendant approached the Court seeking permission to contest on the ground that service of summons upon defendant no.4-petitioner is doubtful. It is not in dispute that the postal peon visited the residence of defendant no.4 for serving the summons upon him and since defendant no.4 was absent, he affixed the summons on the outer wall of the petitioner. From the impugned order, it appears that the learned Court has taken into account that several attempts were made by postal authority by intimation to serve the process/summons upon the defendant no.4 and thereafter the process was returned with endorsement "*Not claimed*". The learned Trial Judge has rightly held that "*Not claimed*" is good service. Such being the position, I find there is no impropriety in the order passed by the learned Trial Judge.

Accordingly, the revisional application being **C.O.2910 of 2022** stands dismissed.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)