

17.10.2023.
Item No. 12.
Court No. 13
ap

F.M.A.T. No. 428 of 2023
With
I.A. No. CAN 1 of 2023
Smt. Santosh Dhanuka
Versus
Smt. Sikha Dey & Anr.

Ms. Anita Khatri.

...For the appellant.

Mr. Pradip Kumar Kundu,
Mr. Diptyendu Kumar Pal.

...For the respondents.

1. The instant appeal is directed against an order no.20 dated 17th August, 2023 by which the learned Court below rejected an application under Order XI, Rule 13 of the Code of Civil Procedure, 1908 and refused to recall an ex parte decree dated 12th February, 2020.

2. The appellant/tenant/defendant claims that she received a writ of summons in time but was able to obtain an Advocate from the District Legal Services Authority, only in November, 2019.

3. She further submits that the Lawyer nominated by the District Legal Services Authority, namely, Subhas Chandra Sarkar did not file a Vakalatnama on her behalf and also did not file the written statement in the suit or seek time therefor. She also submits that on 12th April, 2020 the said Advocate, only filed a Hazira. The Court below therefore, not finding any decisive steps on behalf of the appellant, decreed the suit ex parte on the said date.

4. Thereafter an application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 had been filed by the appellant in the Court below, which was rejected on the ground of negligence of the Advocate and the appellant herself.

5. The learned Counsel for the respondent/landlord/plaintiff/decreed holder submits that the original tenant died in the year 2010. He submits that the suit was filed in 2019 for eviction of the appellant, who was a trespasser in the premises as per law six months after the death of the original tenant. He also submits that she continued to live there for nine years after the death of her parents.

6. This Court has carefully considered the averments in the application under Order XI, Rule 13 of the Code of Civil Procedure, 1908 and the impugned judgment.

7. A litigant cannot be penalized for the omission of her Advocate. It is equally true that the Advocate is a mere agent and the litigant, i.e. the appellant herself, should have been vigilant enough to effectively defend the suit.

8. However, having regard to the facts of the case and the fact that a Lawyer nominated by the District Legal Services Authority did not effectively conduct the case or even file the Vakalatnama in the Court below, this Court, in the interest of justice, would like to permit the appellant to defend the suit.

9. Let written statement be filed by the appellant/defendant within a period of ten days from date. Let inspection and discovery be completed within a period of one week thereafter. Let the suit itself be fixed for peremptory hearing within a week after the reopening of the Court after the long Puja Vacation for the year 2023.

10. This Court directs the learned Judge, 12th Bench, City Civil Court at Calcutta to dispose of the suit in accordance with law, without granting any unnecessary adjournments whatsoever to any side, within a period of three months after the long Puja Vacation for the year 2023.

11. In that view of the matter, F.M.A.T. No. 428 of 2023 is allowed. The impugned order No.20 dated 17th August, 2023, the ex parte judgment dated 12th February, 2020, and the decree dated 5th March, 2020 shall stand set aside. The proceedings for execution shall also stand set aside.

12. Consequently, CAN 1 of 2023 shall also stand disposed of.

13. There will be no order as to costs.

14. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)

