

S/L 15
01.05.2023
Court. No. 12
Sourav

CO 3580 of 2022

Saibal Dutta Choudhury & Anr.
Vs.
Umesh Koshta aias Raj & Anr.

Mr. Tarak Nath Halder
Mr. Sagnik Chatterjee

...for the petitioners.

Mr. Devajyoti Barman
Ms. Sanjukta Mallick

...for the opposite parties.

1. Both the parties are represented by their respective learned advocates.
2. The affidavit-in-opposition filed on behalf of the opposite parties be taken on record.
3. Perused the instant revisional application and the certified copy of the impugned order. Heard learned advocates for the contending parties at length.
4. The present revisional application is now taken up for passing appropriate order.
5. In this revisional application the order dated September 6, 2022 as passed by learned Additional District Judge, Fast Track Court II, Sealdah, District - South 24 Parganas in O.S. No. 5 of 2019 has been assailed.
6. By the impugned order, learned Trial Court rejected the prayer of the defendant nos. 1 and 2 to accept the cause shown by them with a further prayer for taking the said suit off from the ex parte board. The defendant nos. 1 and 2 of the said suit felt aggrieved and thus preferred the instant revisional application.

7. Mr. Halder, learned advocate for the defendant nos. 1 and 2/revisionists at the very outset draws attention of this Court to the photocopy of the application which has been rejected by the learned Trial Court. It is contended by Mr. Halder that even after giving sufficient explanation with regard to the non-service of summons upon the defendant nos. 1 and 2 and even after submitting that the defendant nos. 1 and 2 have no knowledge about the pendency of the said suit before the learned Trial Court, the learned Trial Court for no reason whatsoever disbelieved the contention as raised by the defendant nos. 1 and 2 and thus wrongly passed the impugned order depriving the revisionists from contesting the said suit. It is contended by Mr. Halder that the instant revisional application may be allowed by setting aside the impugned order.
8. Mr. Barman, learned advocate for the plaintiffs/opposite parties, however, contended that from the Order No. 3 dated 17.07.2019, it would reveal that summons of O.S. No. 5 of 2019 was duly served upon the present revisionists and in spite of such service, the present revisionist being the defendant nos. 1 and 2 of the said suit have chosen not to appear before the learned Trial Court. It is contended by Mr. Barman that the learned Trial Court is very much justified in passing the impugned order.

9. On perusal the entire materials as placed before this Court and after hearing the learned advocates for both the parties, it reveals that admittedly from the Order No. 3 dated 17.07.2019 as passed in O.S. No. 5 of 2019, it is evident that the summons upon the present revisionists have been duly served and in spite of that, the defendant nos. 1 and 2 did not appear before the learned Trial Court for the reason best known to them.
10. However, considering the fact that by filing the petition dated 29.06.2022, the defendant nos. 1 and 2 contended that they have no knowledge of the pendency of O.S. No. 5 of 2019, this Court considers that the present revisionists being defendant nos. 1 and 2 of the O.S. No. 5 of 2019 may be given an opportunity to contest the said suit before the learned Trial Court for effective adjudication of the *lis* as pending before the learned Trial Court.
11. In view of the discussion made hereinabove, this Court is inclined to allow the instant revisional application, however, subject to payment of some cost to the present opposite parties.
12. It is thus ordered, that the present revisional application stands hereby allowed on contest. Consequently, the application of the present revisionists/defendant nos. 1 and 2 dated 29.06.2022 stands hereby allowed on contest subject to payment of cost of Rs. 5,000/- which is to be paid by the defendant nos. 1 and 2 to the plaintiffs within a

month from the date of passing of this order and the money receipt showing the deposit of cost shall have to be filed positively before the learned Trial Court, thereafter, within a fortnight.

13. In the event, the cost as directed to be paid, has been paid by the present revisionists within the specified time, the Trial Court is hereby directed to accept the written statement of the defendant nos. 1 and 2 as filed in O.S. No. 5 of 2019.
14. Learned Trial Court is further directed to dispose of O.S. No. 5 of 2019 as expeditiously as possible but positively within six months from the date of communication of this order.
15. In view of the aforementioned observation, the revisional application being **CO 3580 of 2022** is thus disposed of. The order of stay as passed by this Court on 07.02.2023 stands hereby vacated and all interim applications, if therebe any, in connection with the revisional application stands hereby disposed of.
16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)