

July 25, 2023
Sl. No.8
Court No.19
s.biswas

CO 3753 of 2022
With
CAN 1 of 2023 (Not available with the file)

Sri Arup Kumar Sen and another
vs.
Smt. Kalpana Roy

Mr. Basab Shaw
Mr. Debnath Ganguly

... for the petitioners

Mr. Abhijit Roy

... for the opposite party

The revisional application has been filed challenging an order dated November 14, 2022, passed by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.313 of 2013.

The learned court below, rejected an application filed by the petitioners dated September 7, 2022, praying for recall of the order dated August 18, 2022.

On August 18, 2022, the suit was fixed for further cross-examination of PW1. On that date, the defendants did not take steps. None appeared on behalf of the defendants. Accordingly, the cross-examination of PW1 was closed and the defendants' evidence was also closed. The suit was fixed for arguments.

The learned court below found that on August 5, 2022 and on July 26, 2022, no steps were taken by the defendants. As there was already an existing

order of the Hon'ble High Court directing speedy disposal of the suit, thus, the cross-examination of PW1 and the evidence of the defendants were closed.

The learned advocate for the defendants\petitioners submits that the learned court below erred in rejecting the application. The suit was fixed on September 21, 2022 awaiting intimation from the learned City Civil Court at Calcutta. A notice was served upon the defendants/petitioners that the matter would be moved before the learned 5th Bench. As the learned 5th Bench was not scheduled to take up such matters on that date, the defendants did not appear. The plaintiff instead of moving the matter before the learned 5th Bench moved the same before the learned 3rd Bench. The petitioners were not aware of the order passed on August 18, 2022 as the petitioners were not issued further notice.

Subsequent orders were also not known to the petitioner, in view of the fact that the suit was preponed without notice to the petitioners. It is further alleged that there was no direction for expeditious disposal of the suit.

The learned advocate for the opposite party/landlord submits that a notice was served upon the petitioners. A put up application would be filed before the learned 5th Bench for preponement of

the suit had been intimated to the defendant. It was incumbent upon the petitioners to find out whether the matter was moved at all. Moreover, the order dated June 24, 2022 passed by the learned Judge-in-Charge, 5th Bench, records that the application for preponement of the date of hearing of the suit was served upon the defendants/petitioners. The petitioners objected to such application. Despite such objection, the suit was preponed from September 21, 2022 to July 14, 2022. Such order is available from the documents annexed by the petitioners. This court cannot go beyond such order. It appears that thereafter the suit proceeded on the dates fixed by the learned Judge-in-Charge, 5th Bench.

By an order dated July 26, 2022, August 5, 2022 the suit was fixed for cross-examination of PW1. The defendants did not take steps. None moved on behalf of the defendants. Hence, August 18, 2022 was fixed for further cross-examination of PW1. On August 18, 2022 also, none appeared to cross-examine PW1. The defendants did not take steps despite, two calls. Hence, the cross-examination of PW1 was closed. The evidence of the defendants was also closed. September 7, 2022, was fixed for arguments. At that juncture, the

defendants filed the application for recalling. The said application was rejected.

Having considered the order-sheet, it appears to the court that on June 24, 2022, the defendants were aware that the plaintiff had prayed for preponement of the date of the suit. The date was preponed from September 21, 2022 to July 14, 2022. Thereafter, on subsequent dates, the matter was fixed for cross-examination of PW1, when the defendants did not take any steps. Ultimately, finding no other alternative, the court was compelled to close the cross-examination of PW1 and the evidence of the defendants.

This court does not find that the learned court below either acted illegally or with material irregularity. However, for the ends of justice, one last opportunity must be given to the defendants to cross-examine PW1 and thereafter adduce evidence. This is a suit for eviction of a tenant which was filed in 2013 on the ground of reasonable requirement. Ten years have passed and the defendants have not proved to be sincere in their approach. Thus, the plaintiff must be compensated with cost.

The order impugned is set aside. The defendants will cross-examine PW1 on August 9, 2023. The PW1 shall be present on that date. The cross-examination of PW1 shall be completed on a

single day. Before the defendants proceed with the cross-examination of PW1 on the next date, the court will be satisfied that the cost of Rs.5000/- has been paid to the plaintiff. After cross-examination of PW1, the evidence of the defendants shall be completed within a month. The suit shall be disposed of within six months, along with the pending applications, if any.

The revisional application and connected application are thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)