

APOT/55/2023
CS/123/2016
IA NO.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ARSHAD AKBAR
VS
HAIDER AII AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 21ST JUNE, 2023.

Appearance

Mr. Haider Ali
Plaintiff in-person

Mr. Tapas Kumar Dey, Advocate
... for the Defendant no.8

The Court: The plaintiff is appearing in-person.

The appeal is arising out of an order dated 24th November, 2022 passed in connection with an application for recall of an order dated 10th July, 2018. The application was dismissed as a consequence whereof the suit has proceeded ex parte against the appellant.

A partition suit has been filed on 27th April, 2016. In spite of service of summons, the present appellant had entered appearance in the suit on 8th June, 2016 but did not file written statement. Substituted service was effected on defendant nos.6 to 17. It is now being contended

that he was not aware of the pendency of the suit. It appears from record that Mr. Haider Ali, the plaintiff was examined on 15th January, 2019 and 12th February, 2019. The evidence of the plaintiff, however, is not completed. On 10th July, 2018, in view of failure on the part of the defendant no.8 to file written statements, suit was transferred to the undefended cause list. The plaintiff was examined on two occasions.

We have been informed that the defendant no.10 had entered appearance and in terms of the leave granted by the learned Single Judge on 2nd February, 2023, the defendant no.10 has filed written statement. A copy of the said written statement has been duly served upon the plaintiff. The learned Single Judge declined to recall the order dated 10th July, 2018 on the ground that the applicant did not proceed with the suit diligently. The facts remain that even today that the application is not accompanied by written statement. Lack of diligence cannot be countenanced.

However, having regard to the fact that the defendant no.10 has filed written statement and the suit is now required to be heard as a contested suit, the defendant no.8 shall be entitled to file written statement within 10 days from date upon payment of cost of Rs.50,000/- to the plaintiff within the aforesaid period. In default, the suit shall proceed against the applicant/appellant ex parte. The department shall not accept the written statement without proof of payment. The said cost is to be paid to the plaintiff through RTGS/NEFT and/or bank draft

within the aforesaid period. The plaintiff shall furnish bank details to Mr. Rakesh Roy, Advocate by Thursday.

Discovery and inspection of documents on behalf of the defendant shall be within a week thereafter, failing which, the defence shall be struck off without any reference to Court. Consequent upon the filing of the written statement, issues may be reframed if prayed for.

The examination in-chief of the plaintiff is not over. The defendant shall serve a copy of the affidavit of document upon the plaintiff within a week after filing of the written statement.

The impugned order is set aside subject to compliance of the aforesaid order.

The appeal and the application stand disposed of.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)