

OD-1

ORDER SHEET

CS 140 of 2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

DIBYENDU MONDAL
VS.
THE MIS DEPARTMENT M/S. SIMPLEX INFRASTRUCTURES LIMITED &
ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 12th December, 2023.

Md. Abdullah Gazi, Advocate for the proposed plaintiff.

The Court : Pursuant to the order dated 30th November, 2023 the learned Master has filed a detailed report wherefrom it is clearly evident that the plaint in CS 140 of 2021 was filed in the computer department of this Court with deficit court fees. The plaint was never presented or admitted. The deficit court fees was also not paid. The records also reveal as indicated in the report that the plaint appeared before the appropriate Bench under the heading 'Presentation of Plaint' but the same was never presented before the said Bench, as a result whereof it was directed to go out of the list. It requires no deliberation that unless the plaint is presented and admitted as required under Chapter VII Rule 4 of the Original Side Rules of this Court, the suit is not instituted. In the instant case the suit was, therefore, not born. However, with the change in determination another Bench had dismissed the suit for non-appearance of the plaintiff and had subsequently restored the same. At the time when the suit was mentioned before this Bench all these facts were neither pointed out to the Bench nor was within

the knowledge of the Bench. The learned Advocate representing the proposed plaintiff wanted to withdraw the suit and as such the matter was directed to appear in the list under the heading 'To Be Mentioned'. Subsequently when the learned Advocate submitted that his client is no more interested to withdraw the suit, the suit was directed to be made ready for hearing. At this juncture it was noticed that the plaint was never presented.

The learned Advocate for the proposed plaintiff says that the proposed plaintiff has purchased the deficit court fees and is interested in presenting the plaint with deficit court fees.

The most pertinent question which will arise at this stage is that the suit is languishing in the computer department without being presented from 2021. About two years have elapsed in between. If the claim of the proposed plaintiff has become time barred then by permitting the plaint to be presented now will revive the limitation which otherwise cannot be done in case of an original claim save and except the exceptions permitting exemption from limitation.

In the aforesaid facts and circumstances, the plaint is directed to be returned back to the computer department. The department shall treat the suit to have not been instituted. The proposed plaintiff will be at liberty to take appropriate steps in accordance with law if he intends to file a suit against the proposed defendants.

(ARINDAM MUKHERJEE, J.)