

10.9. 2024
item No.10
n.b.
ct. no. 551

C.O. 883 of 2007

Smt. Mandira Roy

Vs.

Sri Tapan Kumar Roy.

Mr. Shyamal Chakraborty,
Mr. Debajyoti Mondal,
..... for the petitioner.

It appears that the petitioner has intimated the learned Counsel for the respondent through a letter of communication. The letter be kept in the record.

None appears on behalf of the respondent despite service.

The instant C.O. has been preferred against the order dated February 6, 2007 passed by the learned Civil Judge, Senior Division, Fast Court at Krishananagar, Nadia in Title Suit No.157 of 2002. It appears that by passing the impugned order, the petition of plaintiff dated February 5, 2007 praying for issuance of necessary direction upon the defendant to furnish documents, was rejected by the learned Trial Judge.

Learned advocate appearing on behalf of the petitioner submits that the petitioner being the plaintiff filed a suit for partition by metes and bounds before the learned Trial Judge. The defendant contested the suit by filing written statement along with counter-claim. It is the

case of the petitioner/plaintiff that the petitioner was not awarded opportunity to file written statement against the counter-claim. He submits that only one day was awarded to the petitioner i.e on January 20, 2007 to file the written statement against the counter-claim. On that date, the learned counsel appearing on behalf of the plaintiff was not present in the Court that is why he could not take any steps under a mis-conception that the written statement is directed to be filed by the defendant. However, the plaintiff filed a show-cause on February 5, 2007 asking for necessary arrangement, so that the written statement against the counter-claim filed by the defendant may be allowed to be furnished by the plaintiff. On the same day, the plaintiff also filed one application for issuing necessary direction upon the defendant to furnish the documents, which he relied in the counter-claim. He submits both petitions were erroneously rejected by the Learned Civil Judge concerned. Hence this revision.

Heard the learned advocates and perused the impugned order passed by the learned Civil Judge concerned. It appears to me that in passing the impugned order, the learned Civil Judge is of opinion that sufficient opportunity was given to the plaintiff to file written statement but he has not availed the said opportunity. The learned Trial Judge is also of opinion that the original documents are in custody of the plaintiff and the plaintiff

is knowledge of such document that is why the application for furnishing of the documents is turned down.

Considering the entire facts and circumstances of the case, it appears that this is a suit for partition by metes and bounds. The defendant had chosen to contest the suit by filing written statement along with counter-claim. The nature of the counter-claim itself in its nature, a plaint complaint filed by the defendant. The plaintiff must have given an opportunity to counter the pleadings filed by the defendant. It appears that the learned Trial Judge has given an opportunity to the plaintiff to file written statement, which was missed by plaintiff due to misconception.. However, a reasonable show-cause application was filed before the learned Trial Judge.

Considering the entire aspect, it appears to me that the plaintiff, if not awarded sufficient opportunity to contradict the pleadings of the defendant in counter-claim, the entire suit cannot be disposed of effectively. Furthermore, in the suit for partition by metes and bounds, in its peculiar nature, requires ascertainment of shares of each parties in particular manner. On that score, the pleadings of the parties must be on record.

Under the circumstances, I am of the view that the plaintiff/petitioner herein be allowed to file the written statement against the counter-claim. Thus, the impugned order passed by the learned Civil Judge concerned appears to me erroneous. Plaintiff/petitioner is hereby at

leave to file the written statement against the counter-claim filed by the defendant positively within September 30, 2024 before the learned trial Judge after serving a copy to the defendant.

In considering the application of the plaintiff for production of document by the defendant, it requires to deal with the provision under Order 7 Rule 14 of CPC. The Order 7 Rule 14 is quoted below:

“14. Production of document on which plaintiff sues or relies- (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's

witnesses, or, handed over to a witness merely to refresh his memory.”

It is the mandate of the statute that the documents, which were relied upon by the plaintiff be placed before the initiation of the trial. The counter-claim is itself is of nature of plaint, the defendant must have produced list of documents along with counter-claim according to the direction of the statute enumerated under Rule 7 Order 14. Though, the learned Civil Judge concerned as of opinion that the documents are in custody of the plaintiff that too, the defendant must have enclosed the list of documents, which he intends to rely on the counter-claim. Law is well settled regarding proof documents under the custody of rival party.

On the above score, the application filed by the plaintiff/petitioner under Order 7 Rule 14 CPC it appears to be justified. Learned Trial Court has committed error in dismissing the application filed by the plaintiff.

On that score, the defendant is directed to submit the list of documents, which he relies in the counter-claim within eight weeks from the date of communication of this order. If they fail to comply the order, the consequences enumerated in the law laid down therein shall ensue.

Under the above observation, the instant C.O. 883 of 2007 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)