

Ct. No. 652
127
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22.03
2024

C.O. 1327 of 2021
Akshay Kumar Sen
-Versus-
Satyanjib Rudra & Ors.

Mr. Mrinal Kanti Ghosh
Mr. Chandra Nath Sarkar ...For the Petitioner

Mr. Aniruddha Chatterjee
Mr. Saptarshi Kumar Mal ...For the Opposite Parties

Affidavit-in-reply to the affidavit-in-opposition
filed on behalf of the petitioner is taken on record.

Petitioner herein as plaintiff filed a suit for eviction
and consequential reliefs against the opposite parties herein,
being Title Suit No. 137 of 2015 before the Civil Judge
(Junior Division), 1st Court at Sealdah and the opposite
parties herein as defendants appeared in the said suit and
filed written statement denying material allegations made in
the plaint.

The opposite parties herein as defendants also filed
applications under Section 7(1) and 7(2) of the West Bengal
Premises and Tenancy act, 1997. Petitioner contended since,
the defendants/opposite parties herein are not diligent in
proceeding with the suit, the Court below posted the suit for
ex parte hearing and ultimately on 4th April, 2011, the Court
below decreed the suit ex parte and directed the defendants
to quit the suit property and deliver vacant possession of the
suit premises within a period of 30 (thirty) days.

Thereafter, the petitioner filed a miscellaneous case, being Misc. Case No. 15 of 2017 under Order IX, Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. Petitioner herein as opposite party of the said miscellaneous case filed written objection denying the material allegations contained therein. The aforesaid miscellaneous case, being Misc. Case No. 15 of 2017 came up for hearing before the Court below on 26th April, 2017 and the Court below by the order impugned was pleased to allow the defendants' Miscellaneous case and thereby set aside the ex-parte decree.

Being aggrieved by that order Mr. Mrinal Kanti Ghosh, learned Counsel appearing on behalf of the petitioner submits that the Court below acted illegally and with material irregularity in allowing the said Misc. Case and he did not appreciate that this is not a case that after 5th September, 2016, the next date was fixed on 4th April, 2017 when the suit was disposed of ex parte. In fact the Trial Court did not consider the fact that after 5.9.2016, several dates were fixed for hearing and the defendants/opposite parties were not diligent to contest the said suit. The Court below ought to have considered the cross-examination of PW 1, wherein he has admitted that the petitioner has no document to show that the department had stated him that the record of

Title Suit No. 137 of 2015 has been misplaced. The Court below ought to have considered that self created confusion in the mind of the defendants as regards date of hearing of the suit, cannot be a ground for recalling of the ex parte hearing, in absence of cogent document to show the sufficient cause for non-appearance on the date of hearing of the suit. Accordingly, he has prayed for setting aside the order impugned.

Mr. Saptarshi Kumar Mal, learned Counsel appearing on behalf of the opposite parties submits that they filed interlocutory applications challenging maintainability and also filed petition seeking transfer of said suit from the said court and there was no intentional latches on their part in not appearing before the Court when the suit was called on for hearing. In fact the opposite party herein/defendant had not find the date since 05.09.2016 and the cause list for the said date had been kept blank and if the petitioners had obtained the next date from cause list, they would have contested the suit. Thus the Court below was justified in setting aside the ex parte decree and to give them opportunity to contest the suit and as such the order impugned does not call for any interference by this Court, invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made on behalf of both the parties and also the observation made by the Court below in allowing the aforesaid miscellaneous case, being Misc. Case No. 15 of 2017. The Court below made an elaborate discussions and came to a finding that the petitioners of the instant Misc. Case cannot be held to be not acted diligently instead they have shown sufficient cause in view of the fact that the put up petition by which hearing of suit was shifted back was not served upon defendants and as such it cannot be said that the opposite parties/defendants had knowledge of the dates after the shift back petition was allowed on 14.06.2016, though at the same time court below negated the defendants contention that no date was fixed since 05.09.2016, and as such he has allowed the Misc. Case filed under Order IX, Rule 13 of the Code.

Ordinarily a litigant ought not to be denied a hearing on merit. The cause of justice does require that as far as possible adjudication be done on merits. Moreover High Court while exercising jurisdiction under Article 227 of the Constitution of India is not supposed to interfere with findings of fact, where court below rendered findings on proper appreciation of facts and evidence adduced by the parties and no jurisdictional error committed. In such view of the matter I do not find any merit in the present

application.

The application, being C.O. 1327 of 2021 is accordingly disposed of.

However, learned Court below is directed to dispose of pending interlocutory application, if any, within a period of six weeks from the date of communication of this order and to make every endeavour for expeditious disposal of the suit, since the suit is pending from 2015.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)