

D/L - 4
20.11.2024
Court. No. 5
S.Kundu

C.O. 1744 of 2024

Ankit Agarwal
Vs.
Boon Realtors Private Limited & Ors.

Mr. Partha Chakraborty,
Mr. Archishman Chakraborty,
Ms. Debanjali Payra

...for the petitioner.

Mr. Amit Kumar Nag,
Ms. Pritha Bhaumik,
Mr. Partha Banerjee,
Mr. Maharnab Roy

...for the opposite parties.

1. Affidavit of service is filed in Court today be taken on record.
2. Challenging the order dated 18th April, 2024 passed by the learned Civil Judge (Junior Division), 4th Court, Alipore in T.S. No. 1447 of 2021, whereby the defendant's application under Order XXXIX Rule 7 read with Section 151 of the Code of Civil Procedure was allowed, the instant revisional application has been filed.
3. The learned advocate representing the plaintiff would submit that although on 18th April, 2024, the learned counsel representing the plaintiff was not available due to medical reasons and despite the plaintiff seeking an

adjournment on the said date, the learned court had allowed the said application.

4. It is submitted that the plaintiff did not get appropriate opportunity to place his case on 18th April, 2024 when the application under Order XXXIX Rule 7 was allowed, and as such this Court may be pleased to set aside the order and remand the matter back to the learned court for re-adjudication.
5. On the other hand, it is submitted on behalf of the defendant/opposite parties that although the above application under Order XXXIX Rule 7 of the Code of Civil Procedure was filed on 3rd August, 2023 and despite the plaintiff being afforded repeated opportunities, no written objection was filed. He submits that the petitioner is only interested to delay the hearing of the above application and for reasons as aforesaid had sought for an adjournment on 18th April, 2024 which had been rightly rejected by the learned Judge. There is no irregularity in the order passed by the learned Judge, the plaintiff also could not indentify any. As such no interference is called for.
6. Having heard the learned advocates appearing for the respective parties, I notice that despite the learned court affording repeated opportunity to the plaintiff to file written objection to the application filed under Order XXXIX Rule 7 of the Code of Civil Procedure, no written objection was filed. There is no adequate

explanation forthcoming as regards non-filing of the written objection. It however, appears that the order dated 18th April, 2024 has been passed despite the plaintiff seeking an adjournment on the ground of medical condition of his counsel.

7. Having considered the same, I am of the view that the learned Judge ought to have afforded the plaintiff with a further opportunity. To that extent, I find the above order to be irregular. At this stage, the learned advocate representing the plaintiff/petitioner would submit that he has instruction to file written objection and is ready and willing to be subjected to such terms as this Court may deem fit. Having regard thereto and taking note of the fact as apprised by the learned advocates representing the parties that the next date of hearing is fixed on 6th January, 2025, while setting aside the order dated 18th April, 2024, I permit the petitioner to file written objection to the above application under Order XXXIX Rule 7 of the Code of Civil Procedure subject to payment of costs of Rs.15,000/- to be paid by the plaintiff to the defendants. The aforesaid costs must be paid on or before the end of November, 2024. Subject to payment of costs, learned trial Court shall accept the written objection provided the same is affirmed and filed on or before 15th December, 2024 with an advanced copy to the defendants. It is expected that the

learned Judge shall hear out and dispose of the aforesaid application under Order XXXIX Rule 7 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure afresh on the next date of hearing without granting any unnecessary adjournment to any of the parties. Be it recorded that the learned advocate representing the plaintiff has submitted that the plaintiff shall not seek for any further adjournment on the said date.

8. I make it clear that this Court has not gone into the merits of the application filed under Order XXXIX Rule 7 of the Code of Civil Procedure and the learned Judge shall decide the same on its own merit.
9. Accordingly, this revisional application is disposed of.
10. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)