

28.05.2024
Sl. No.09
g.b.
Court No.03

CO 1912 of 2024

W. B. Housing Infrastructure Development Corporation
Ltd.

-Vs-
Balaji Enterprises

Mr. Aritra Basu
Mr. Sandip Dasgupta
Mr. Aviroop Mitra
.....For the Petitioner

Mr. Uttiyo Mallick
Ms. Vedika Sureka
.....For the Opposite Party

The instant revisional application has been filed being aggrieved by the order no.46 dated 13.05.2024 passed by the learned Commercial Court, Rajarhat, North 24 Pgs. in T. S. (Com) No.22 of 2022. By virtue of the impugned order, the plaintiff had been directed to file a show cause as to why the suit shall not be dismissed for default as well as to pay a cost of Rs. 30,000/- to the defendant and to show the receipt copy towards the payment of cost on the next date. The next date is fixed on 13th June, 2024 for filing the show cause as aforesaid.

The learned advocate for the petitioner submits that the Hon'ble Supreme Court vide order dated 6th May, 2024 had, inter alia, directed the Commercial Court to dispose of the suit pending before it within a period of nine months from the date of passing of the order. It appeared that the learned advocate for the petitioner did not allude to the direction of the Hon'ble Supreme Court, as aforesaid in the application under Order XI Rule 5 of the Code of Civil Procedure filed before the Commercial Court on 11th May, 2024. The learned Commercial Court has noted the laches on the part of the petitioner to file the affidavit in chief on several occasions which contributed to the plaintiff's conduct of dragging and delaying the suit

pending for adjudication since 4th September, 2020. The learned advocate for the petitioner submitted that the delay was caused owing to the transfer of the suit from the court of learned Civil Judge (Senior Division), at Barasat to the Commercial Court, Rajarhat, 24 Pgs. Thereafter the point of maintainability of the suit was raised before the Commercial Court at Rajarhat on August, 2021 which was ultimately dismissed by the Commercial Court at Rajarhat by 7th June, 2022 which was assailed and thereafter affirmed by this Hon'ble Court on 22nd March, 2024. Later the same issue was considered by the Hon'ble Supreme Court on 6th May, 2024. Since the Hon'ble Supreme Court has directed the Commercial Court at Rajarhat to complete the hearing of the suit pending before the same within nine months from 6th May, 2024, the learned Commercial Court is to take necessary steps to comply such direction of the Hon'ble Supreme Court.

The petitioner is to file the show cause as to why the suit shall not be dismissed for default in compliance with the order dated 13th May, 2024 passed by the learned Commercial Court at Rajarhat. The learned Commercial Court at Rajarhat is to hear out the application under Order XI Rule 5 read with Section 151 of CPC on merits.

The cost of Rs. 30,000/- be paid to the defendant is waived.

The revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after completion of all necessary formalities.

(Ananya Bandyopadhyay, J.)