

S/L 13
08.7.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2359 of 2024

Manoj Kumar Meharia
Vs.
Netai Bhattacharya & Ors.

Ms. Shebatee Datta
Ms. Poulami Roy

...for the Petitioner.

Mr. Pinaki Ranjan Mitra
Mr. Tapash Chatterjee
Mr. S. Mukhopadhyay

...for the Opposite Parties.

The defendant no.1, in a suit for declaration of title, is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the order dated June 7, 2024 passed by the 5th Court of learned Civil Judge (Junior Division), Howrah in the said suit being Title Suit No.1415 of 2018.

Owing to the non-appearance of the defendants, the learned Trial Judge, vide order dated September 12, 2019, had fixed the suit for *ex parte* hearing.

The petitioner, long time thereafter, on September 01, 2023 entered appearance and filed an application for acceptance of his written statement and for taking the suit off the *ex parte* board.

The learned Trial Judge, by the order impugned, has dismissed the said application holding, *inter alia*, that the petitioner had the knowledge about the suit.

Ms. Datta, learned advocate for the petitioner submits that no summons was served; the records, at best, signify service of the copy of the application for injunction.

Ms. Mitra, learned advocate for the plaintiffs/opposite parties on the other hand submits that the defendant no.3, since deceased, was the father of the defendant nos.1 and 2, who, during his lifetime, had filed different interlocutory applications, including an application under Order VII Rule 11 of the Code of Civil Procedure. Therefore, the learned Trial Judge has rightly held that the petitioner had the knowledge about the pendency of the suit.

Heard learned advocates for the parties; perused the materials-on-record.

The orders passed in the suit disclose service of the application for injunction upon the petitioner, but such service cannot substitute the requirement of service of summons, in the absence of clear proof of such service, it would not be just to post the suit for *ex parte* hearing against the petitioner.

The defendant no.2 is the brother of the petitioner, he stays in Bangalore. Ms. Datta, on instruction, submits that the defendant no.2 has been informed about pendency of the suit, but he is not interested to contest it.

Be that as it may, in view of the absence of any clear proof of service of summons, the suit cannot be allowed to proceed *ex parte* against the petitioner; the order impugned is therefore set aside; in consequence, the suit is taken off from the *ex parte* board as against the defendant no.1 and the written statement filed by him is accepted subject to payment of costs of Rs. 20,000/-

(Rupees Twenty Thousand only) to the plaintiffs within two weeks from date.

In default of payment of the said costs within the time hereby specified, this order shall automatically stand recalled and the suit shall proceed ex parte against the defendant no.1.

The learned Trial Judge is requested to bring the suit to its logical conclusion, as expeditiously as possible, preferably within a period of eight months from the date of communication of this order and in doing so, shall not grant any unnecessary adjournment to either of the parties.

CO 2359 of 2024 is thus disposed of.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)