

January 5, 2024
Sl. No.9
Court No.19
s.biswas

CO 2772 of 2022

Mahendra Thacker

vs.

Bharat Thacker and others

Mr. Sabyasachi Mukherjee

Mr. Bibek Dey

Mr. Mrinmay Nandy

... for the petitioner

1. The petitioner has challenged three orders, i.e., order dated March 8, 2022, April 19, 2022 and April 30, 2022. All the orders were passed by the learned Civil Judge (Senior Division), Kharagpur, Paschim medinipur in connection with Title Suit No.115 of 2020.

2. The petitioner is the plaintiff in the suit. By the order dated March 8, 2022, the learned court accepted the written statement and written objection filed by the defendant no.1. Such acceptance was subject to payment of cost of Rs.200/-. The petitioner submits that the said written statement could not be accepted without formal application.

3. This court has perused the earlier order dated February 19, 2022. It appears that the suit had been fixed for ex parte hearing against the defendant no.1. The defendant no.1 filed an application, praying that the order by which the suit was fixed for ex parte hearing be vacated. The ground taken was that the defendant no.1 was unable to contact his learned advocate, due to the pandemic.

4. Upon hearing the parties, the learned court ordered that the petition for vacating the order by which the suit was fixed for ex parte hearing be allowed, subject to payment of cost of Rs.200/-. The learned court fixed March 8, 2022 for payment of cost by the defendant no.1 and acceptance of the written statement. Thus, the contention of the petitioner that the order dated March 8, 2022 was passed without any formal application having been filed by the defendant no.1 for acceptance of the written statement, is not correct. The defendant no.1 had filed an application with the specific averments as to why the written statement could not be filed within the time fixed by the court and why the suit should not be heard ex parte. By the order dated February 19, 2022, the learned court passed an order allowing the defendant no.1 to file the written statement on March 8, 2022, upon payment of cost of Rs.200/- and filed written objection. There is no illegality and material irregularity in the order dated March 8, 2022.

5. With regard to the order dated April 19, 2022, this court finds that the defendant no.1 filed an application before the court, praying for implementation of the order of status quo with the help of the police authorities. It is true that the court had directed the police authorities to ensure that the

status quo be maintained by the parties, without service of the copy of the said application upon the plaintiff and the court had fixed April 30, 2022 for compliance of the order by the Officer-in-Charge, Kharagpur (Town) Police Station. On April 30, 2022 both the parties appeared and filed hazira and the learned court framed the issue. The plaintiff filed an application praying before the court that the order dated April 19, 2022 be kept in abeyance, as the said order was passed without any notice to the plaintiff. The learned court found that the application was liable to be rejected, as the plaintiff would not suffer any prejudice. If the order of status quo be implemented by the police authorities, all parties would benefit. By the order dated April 30, 2022, the petitioner's application was rejected.

6. In my opinion, the order of status quo was passed at the instance of the plaintiff and the learned court had the authority to ensure that the order was not violated by the parties. Implementation of the order of status quo, which was passed on the application for injunction filed by the plaintiff, enures to the benefit of the plaintiff as well. After 1 and $\frac{1}{2}$ years from the date of passing of the order, no useful purpose will be served in interfering with the same. If the plaintiff is aggrieved by any subsequent event or any action by the

defendant no.1, in respect of the suit property, the plaintiff is at liberty to approach the learned court by filing the appropriate application and if such application is filed, the same shall be disposed of in accordance with law.

7. It is impossible for this court to ascertain what transpired between the passing of the order dated April 30, 2022 and now.

The learned advocate for the petitioner fairly submits that as the issues have been framed, the learned court below may be directed to dispose of the suit expeditiously.

8. The prayer is innocuous and reasonable. Under such circumstances, the learned court below is directed to dispose of the suit within a year from the next date fixed.

9. The revisional application stands disposed of.

10. All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)