

24.01.2024
Item No.61
Ct. No. 7
KS

C.O. 3425 of 2023
Smt. Shakuntala Devi Ruia & Anr.
Vs.
Anjali Soor & Ors.

Mr. Sutirtha Mukherjee
Mr. B. K. Singh
Ms. Ria Paul

.....for the Petitioners

Mr. Asim Kumar Roy
Mr. Anirban Roy
Mr. Debjit Basu

.....for the O.P.

1. The order dated 21st August, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat in Title Suit No.24 of 2019 is under challenge in this application under Article 227 of the Constitution of India.
2. By the said order, the application of the defendant/petitioner for vacating the order for *ex parte* hearing stood rejected on contest and 26th September, 2023 was fixed for passing the *ex parte* order.
3. Learned advocate for the petitioner submits that on 2nd March, 2024 the suit was directed to be heard *ex parte*. He further submits that since the learned advocate for the petitioners was engaged in another Court, he could not appear at the time of hearing.
4. Learned advocate appearing for the opposite parties submits that the petitioners are not diligent in contesting

this title suit. He further submits that on an earlier occasion that the defendant/petitioner herein was also asked to show-cause.

5. In view thereof, according to the learned advocate for the opposite parties, the impugned order should not be interfered with.
6. Heard learned advocates for the parties and perused the materials placed.
7. On a query of the Court, learned advocate for the opposite parties, in his usual fairness, submits that till date, the learned Trial Judge has not yet passed the judgment in Title Suit No.24 of 2019.
8. Order 9 Rule 7 of the Code states that:-
“Where the Court has adjourned the hearing of the suit ex part, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”
9. It appears from the record that by an order dated 2nd March, 2023, the suit was fixed for *ex parte* hearing on 8th May, 2023 and on 8th May, 2023, the learned Trial Judge after examination of P.W.1 closed the evidence and fixed 8th June, 2023 for *ex parte* arguments. On 8th June, 2023, the learned Trial Judge fixed 11th July, 2023 for *ex parte* argument. On 11th July, 2023, the *ex parte* hearing took place and 21st August, 2023 was fixed for order.

However, till date the judgment has not been pronounced.

10. In the meantime, petitioner filed the application for vacating the *ex parte* hearing on the ground that the CIS/e-Court was showing the different stage of the case proceeding and since the learned advocate of the petitioner was engaged in another Court, he could not file any objection for *ex parte* hearing.
11. It is not in dispute that the petitioners have filed the written statement and was contesting the suit but, due to absence of the learned advocate for the petitioners, the suit was fixed for *ex parte* hearing.
12. Record reveals that the affidavit-in-chief was filed on 8th May, 2023 and the P.W.1 was examined and documents were marked as exhibits on that date. The learned Judge, however, closed the evidence without fixing any date for cross-examination. Reasons for non-appearance on 2nd March, 2023, as stated in the vacating application is that the learned advocate could not follow the case diary and the order sheet. The petitioners had engaged an advocate for conducting his case and he should not be made to suffer for the fault, if any, of his learned advocate.
13. This suit is for eviction and the petitioner was contesting the same by filing written statement. The reasons for

non-appearance on 2nd March, 2023 and 8th May, 2023 are beyond the control of the petitioner. Moreover, till date the judgment has not been pronounced. Considering the peculiar facts of this case, this Court is inclined to give a last and final opportunity to the petitioner to contest the suit.

14. For all the reasons, as aforesaid, the application dated 17th July, 2023 filed by the defendant/petitioner herein for vacating the order of *ex parte* hearing stands allowed.
15. The learned Trial Judge is directed to proceed with this suit from the stage of cross-examination of the witness of the P.W.1.
16. With the above observations and directions, C.O. 3425 of 2023 stands allowed.
17. There shall be no order as to costs.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)