

20.11.2024
Ct. No. 22
Sl. No.117
KB

**In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

CO 3285 of 2022

**Sri Prakriti Ranjan Bera
-versus-
Sri Bimal Kumar Bera & Ors.**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das

... For the petitioner.

1. Affidavit of Service filed in Court is taken on record.

2. None appears on behalf of the opposite parties in spite of service of notice.

3. This Civil Order has been filed challenging the order no.8 dated 6th July, 2019 passed by Learned Additional District Judge, 1st Court (in-Charge) at Contai, District – Purba Medinipur in connection with Title Appeal No. 17 of 2018 arising out of Title Suit No.80 of 2013 whereby Learned Judge allowed two applications under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as CPC) and under Order 1 Rule 10 CPC respectively.

4. Learned counsel appearing on behalf of the petitioner has drawn my attention to the certified copy of the orders passed in the appeal and contended that no service was filed and after filing of appeal,

summons were not served upon the respondent no.1/petitioner herein.

5. It is submitted that respondent no.1 being the sole plaintiff filed the Title Suit No. 80 of 2013 before the Learned Civil Judge (Junior Division), 1st Additional Court, Contai, District – Purba Medinipur and that suit was decreed on 31.01.2018 which was assailed in Title Appeal No. 17 of 2018.

6. It is further contended that nowhere from the orders passed by the Appellate Court that since the time of filing of the appeal, it is found that summons were served upon the respondent no.1, i.e. plaintiff of the suit.

7. It is submitted that Learned Judge without being satisfied about service of notice upon the respondent no.1, disposed of all the applications filed by the appellant/opposite party no.1 herein.

8. I have gone through all the certified copies of the orders from 20th February, 2018 when appeal was filed till 06.07.2019 when the Learned Judge allowed applications under Order 6 Rule 1 CPC as well as Order 1 Rule 10 CPC.

9. From the subsequent order dated 14th August, 2019, it is found that appellant was directed to take steps upon the respondent no.1/petitioner herein.

10. Therefore, it is clear that notice of appeal was never served upon the respondent no.1 i.e. sole

plaintiff and thereby learned Judge denied the right of opportunity of being heard by allowing all the applications under Order 6 Rule 1 CPC as well as under Order 1 Rule 10 CPC.

11. Therefore, the impugned order, in my humble opinion, is not sustainable in the eye of law.

12. As a sequel, the revisional application stands allowed.

13. Learned Judge is requested to take steps under Order 6 Rule 10 CPC as well as under Order 1 Rule 10 CPC after giving opportunity of hearing and filing of written objection, if any, to the respondent no.1/the petitioner herein to the appeal as expeditiously as possible.

14. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bibhas Ranjan De, J.)