

30 03.04.2024
AN Ct. No. 07

CO 3513 of 2023

Sanghamitra Mukherjee & ors.
Vs.
Abhik Sinha Roy & anr.

Mr. Arka Mahalanobis
Mr. Debasis Mitra

... for the petitioners

Mr. Tapas Mukherjee
Ms. Soumita Shaw

... for the opposite parties

The defendants in a suit for eviction and recovery of khas possession has filed this application under Article 227 of the Constitution of India challenging an order dated 10.08.2023 passed by the learned Civil Judge, Senior Division, 1st Court, Alipore, South 24 Parganas in T.S. No. 44 of 2016. The petitioners filed an application before the learned trial judge praying for recalling the order dated 12.03.2020 and for adducing evidence by the substituted sole defendant. Such application was rejected by the impugned order.

Learned counsel appearing for the petitioners submits that the learned trial judge even after observing that not providing any opportunity to the substituted sole defendant to adduce evidence is against the principles of natural justice refused to grant any relief in favour of the petitioner in view of an order passed by the Hon'ble High Court in an earlier civil revisional application.

Learned counsel appearing for the opposite parties, on the other hand, submits that the predecessor-in-interest of the petitioners who was the sole defendant and was not pursuing the suit diligently for which the learned trial court directed the sole defendant to show cause. He further submits that the evidence of the sole defendant was closed and the hearing was also concluded as would be evident from the order dated 12.03.2020. He, therefore, submits that the heirs of the sole defendant are not entitled to any opportunity to contest the proceedings any further.

Record reveals that the sole defendant died on 15.02.2020 and an intimation to such effect was communicated to the Court on 12.03.2020. The learned trial court in ignorance of the fact of death of the sole defendant took up hearing of the said suit on 12.03.2020. Admittedly, no application for substitution of the sole defendant was filed on or before 12.03.2020.

Therefore, this Court is of the considered view that the learned trial court could not have proceeded any further without the heirs of the sole defendant being substituted in the suit. However, it appears that the learned trial judge in its order dated 12.03.2020 recorded that the parties filed the advocate hazira on 12.03.2020. It has been subsequently clarified by the order dated 19.10.2020 that the Bench Clerk No. 1 inadvertently recorded the intimation recording the death of the sole defendant as the advocate hazira. The learned trial court specifically recorded that there is an apparent defect on the face of the order dated

12.03.2020.

The said suit could not have proceeded any further after the death of the sole defendant on 15.02.2020 without the heirs of the defendant being substituted. The learned trial Judge was also of the view that the substituted defendants ought to have been afforded an opportunity to adduce evidence but rejected their prayer only on the ground of subsistence of an order passed by this Court in a civil revisional application.

Upon going through the order dated 20.09.2020 passed in C.O. 2119 of 2022, this Court finds that the said order was passed on an application under Article 227 of the Constitution of India praying for expeditious disposal of the title suit. It appears from the said order that no opportunity of hearing was given to the defendants/petitioners herein.

It further appears that the attention of the Coordinate Bench was not drawn to the order dated 19.10.2020 wherein it was recorded that there is an apparent defect on the face of the order dated 12.03.2020. It appears to this Court that being swayed by the order dated 12.03.2020 that the suit was fixed for judgment, the Coordinate Bench passed the order dated 20.09.2022 in C.O. 2119 of 2022. Since this Court has observed hereinbefore that the learned trial judge was itself of the view that the principles of natural justice requires an opportunity to be afforded to the substituted defendants to contest the suit and to adduce their evidence, this Court holds that the order dated 12.03.2020 is liable to be set

aside and quashed. Accordingly, the order dated 12.03.2020 is set aside and quashed.

In the result, the instant civil revisional application stands **allowed**. It will be open to the parties to approach the learned trial judge and the learned trial judge shall proceed with the said suit in accordance with law.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)