

Item No.15
08.03.2024
Court. No. 19
GB

C.O. 3563 of 2023

Mukhtar Ehsan Khan
Vs.
Sk. Akhtar Hossain & Ors.

Mr. Surendra Kumar Sharma

...for the Petitioner.

*Mr. Subrata Karmakar,
Md. Ali Ahasan*

...for the Opposite Party.

1. The petitioner is the defendant no.1 in Title Suit No.49 of 2009, pending before the learned Civil Judge (Junior Division), 3rd Court at Howrah.
2. The petitioner filed the written statement but thereafter failed to take steps on six dates. Accordingly, the learned court fixed the suit for ex parte hearing against the contesting defendant on May 18, 2023. Petitioner filed an application for vacating the order by which the suit was fixed for ex parte hearing. The reason assigned in the said application was that the petitioner being an old man of 78 years of age was bedridden for a considerable period of time and he was not in a position to contact his learned advocate.
3. It appears that the suit was fixed in close intervals between June 2022 and May 2023. A period of one year was wasted as the defendant failed to take steps due to ill health. However, the injunction application was heard and the said application filed by the plaintiff was rejected by the order dated August 10, 2023. By the same order, the learned court also rejected the application filed by the

petitioner seeking vacation of the order fixing the suit for ex parte hearing.

4. Considering the age of the petitioner and the fact that the petitioner had already filed a written statement, it does not appear to this Court that the petitioner was intentionally delaying the suit. Moreover, the injunction application was heard during the intervening period.
5. Under such circumstances, this Court is of the view that one opportunity should be given to the petitioner to contest the proceedings. In an adversarial form of litigation, to sub serve the ends of justice, the prayer should be allowed. The plaintiff should get a walk over.
6. The revisional application is allowed. The order fixing the suit for ex parte hearing is set aside upon modification of the order impugned. It is intimated to the Court that the opposite party nos.2 and 3 who are the defendant nos.2 and 3 in the suit expired sometime in 2010 and 2016, but their heirs were not substituted by the plaintiff. It appears to this Court that the petitioner is the only defendant who had been contesting the suit. There was no substitution within time. The cause title be corrected upon deleting the names of these opposite parties. Department to take steps.
7. Thus, in my opinion, as no steps were taken by the plaintiff to substitute the heirs of the deceased defendant and also because the deceased defendants did not contest the suit, the suit abated against them. This order is restricted to the plaintiff.
8. Accordingly, the revisional application is disposed of.

9. However there will be no order as to costs.
10. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)