

18.11.2024  
Item No.  
AD 7  
Saswata

**C.O. 3955 of 2024**

**Aptex Enterprises Pvt. Ltd. & Anr.  
versus  
Nagendra Ram & Ors.**

Mr. Arindam Banerjee  
Mr. Raja Baliayal  
Mr. Pranit Bag  
Mr. R. Ganguly  
Mr. Vidya Bhusan Upadhyay  
...For the plaintiffs/petitioners

Mr. Rohit Das  
Ms. Kishwar Rahman  
Mr. Rishav Mazumder  
Ms. Divya Tekriwal  
...For the defendant/opposite party nos. 1 to 5

1. On 14<sup>th</sup> November 2024 when the instant revisional application was moved, this Court was, inter alia, pleased to pass the following order:

1. *Challenging the order dated 4<sup>th</sup> November 2024 passed in Title Suit 19181 of 2012 by the Learned Civil Judge (Senior Division), 4<sup>th</sup> Court, Alipore, South 24 Parganas, whereby the Learned Judge having found that the cause shown by the plaintiffs/petitioners in connection with an order dated 17<sup>th</sup> August 2023 to be not proper, the suit itself was dismissed, the present revisional application has been filed.*
2. *Mr. Banerjee, learned advocate appearing in support of the instant revisional application submits that the instant suit is a suit for specific performance of contract for sale. In the suit a temporary injunction order, directing the parties to maintain status quo as also restraining them from transferring, alienating and encumbering the suit property or creating any third party interest in respect thereof was subsisting, when the suit was dismissed. He submits that the plaintiffs/petitioners had after disposal of the above injunction application filed two several applications, one under Order XXXIX Rule 4 of the Code of Civil Procedure seeking partial modification of the temporary order of injunction and another application under*

Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the plaint.

3. Mr. Banerjee, submits that the aforesaid applications had been filed on 10<sup>th</sup> March 2022. By drawing attention of this Court to the order sheet, he submits that since the plaintiffs/petitioners failed to take any steps on 17<sup>th</sup> August, 2023, an order was passed to show cause as to why the petition shall not be heard *ex parte*. According to him, there had been some delay in responding to the aforesaid show cause. Although, proper explanation had been provided, the Learned Judge without accepting the same and while rejecting the show cause petition, had also dismissed the suit itself by recording that the same is dismissed on contest. This according to Mr. Banerjee, is an irregularity in procedure adopted by the Learned Judge and the aforesaid order cannot operate as a final adjudication of rights between the parties.
4. Having regard thereto, he submits that taking advantage of the dismissal of the suit, the defendants/opposite parties would deal with the suit property so as to render the instant revisional application infructuous. As such, he prays for an interim order, while invoking the revisional jurisdiction of this Court.
5. Citing extreme urgency, this matter has been mentioned and considering the urgency, this Court had directed this matter to appear in today's supplementary list.
6. It appears from the affidavit of service and the records that notwithstanding there is a "no caveat" endorsement, the plaintiffs/petitioners had attempted to serve a copy of the revisional application on the defendants/opposite parties but had only succeeded in causing service of the revisional application on the son of the defendant no.6/opposite party no. 6, though the suit proceeds *ex parte* insofar as the defendant/opposite party no. 6 is concerned.
7. Although, Mr. Banerjee has sought for an interim order, I am of the view that at this stage, without serving notice on the defendants/opposite parties, no order can be passed. However, considering the urgency involved in the matter, I directed the aforesaid revisional application to be listed once again under the same heading, to be taken up as the **first motion** on **18<sup>th</sup> November 2024**.

8. *The plaintiffs/petitioners are directed to communicate the aforesaid order to the learned advocate who was appearing for the contesting defendants before the Learned Trial Court as also directly on the opposite parties.*
9. *Grant of relief to the plaintiffs/petitioners including the maintainability of the application shall be considered on the returnable date.*

2. Today, Mr. Banerjee, learned advocate appearing for the plaintiffs/petitioners submits that the plaintiffs/petitioners have already caused service of the instant revisional application on the defendants/opposite parties.

3. Mr. Das, learned advocate along with his junior Ms. Rahman enters appearance on behalf of the defendant/opposite party nos. 1 to 5.

4. The affidavit of service filed in Court today is retained with the record.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record.

6. As would appear from the above, the instant suit had been dismissed despite the plaintiffs/petitioners having shown cause in terms of the order dated 17<sup>th</sup> August 2023, since such cause was filed belatedly and was not acceptable by the Court. Perusal of the order impugned would, also reveal that the Learned Court had refused to accept the explanation given by the plaintiffs/petitioners. Although, the ground for dismissal of the suit as reflects from the order dated 4<sup>th</sup> November 2024 does not appear to be proper, on the basis of information made available by the parties, on 17<sup>th</sup> August 2023 the suit was not appearing in the peremptory list. The said date was in fact, fixed for

hearing of the two applications filed by the plaintiffs/petitioners as noted therein. Since the plaintiffs/petitioners failed to take steps, they were by the above order directed to show cause as to why the petitions shall not be heard *ex parte*. If the Learned Judge had rejected the show cause given by plaintiffs/petitioners, the Learned Judge at best could have dismissed the above petitions and not the suit itself. The same appears to be an irregularity in procedure adopted by the Learned Judge.

7. At the first blush, upon perusal of the order impugned though it transpires therefrom that the suit has been dismissed on contest, yet upon a proper scrutiny thereof, it would be apparent and clear that there has been no formal adjudication of any of the rights of the parties or the matter in controversy in the suit. Having regard thereto, it is apparent that the learned judge had acted in excess of jurisdiction in recording that the suit was dismissed on contest. The above order cannot partake the character of a decree. As such there can be no impediment in entertaining this application under Article 227 of the Constitution of India. Having regard thereto, I have no hesitation to hold that the order directing dismissal of the suit on contest, appears to be irregular and in excess of jurisdiction and as such cannot be sustained.

8. Further having considered the show cause, I am of the view that though the cause shown by the plaintiffs/petitioners cannot be proper but for the ends of justice, a further opportunity should be given to the plaintiffs/petitioners to place their case subject to payment of costs of a consolidated amount of Rs.75,000/- (Rupees

Seventy Five Thousand only) to be paid by the plaintiffs/petitioners to the contesting defendants/opposite parties.

9. Ms. Rahaman, learned advocate appearing for the contesting defendants/opposite parties, on instruction submits that she is otherwise authorized to accept payment of costs on behalf of the contesting defendants/opposite parties. As such the costs must be paid on or before 22<sup>nd</sup> November 2024 to Ms. Rahaman who shall accept the same against a proper receipt.

10. In view thereof, the order dated 4<sup>th</sup> November 2024 stands set aside and the suit along with its connected applications are restored to its original file and number.

11. With the above observations and directions the revisional application being C.O. no. 3955 of 2024 is accordingly disposed of.

12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

**(Raja Basu Chowdhury, J.)**