

Item No. 01

Ct 22

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07.10.2024

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3838 of 2022

Jayanti Sengupta @ Minu Dutta
Vs
Arati Chandra.

Mr, Sourojit Dasgupta,
Mr. K. P. Tiwari... for the petitioner.

1. Affidavit of service is filed and taken on record.
2. Learned counsel appearing on behalf of the petitioner is present.
3. None appears on behalf of the opposite party.
4. Learned counsel appearing on behalf of the petitioner has submitted that affidavit of compliance yet to be affirmed but cost imposed by the Trial Court has already been paid.
5. This revisional application has been filed challenging the order dated 23.08.2022 passed by the Learned Judge, XIIIth Bench, City Civil Court, Calcutta, wherein learned Judge refused the application dated 05.05.2022 with a prayer for taking the suit off *ex parte* board and fixed *ex parte* haring of the suit.
6. From the record, it appears that defendant/petitioner herein entered into the suit and filed written statement along with an application for acceptance of the said written

statement but on call none appeared on behalf of the defendant. The matter was adjourned on 22.06.2017 subject to payment of Rs.2000/-. Again on 22.06.2022 defendant did not take any steps. Ultimately Court rejected the application and imposed cost of Rs.5000/- along with a direction to file show cause as to why the suit shall not be heard *ex parte*. Again on 07.09.2017 defendant failed to take steps let alone payment of cost and thereafter suit was fixed for *ex parte* hearing. On 05.05.2022, defendant filed an application for taking of the suit out of the *ex parte* board. That application was considered and rejected and fixing the date for *ex parte* hearing of the suit.

7. Learned counsel appearing on behalf of the petitioner has admitted about lackadaisical conduct of the defendant in proceeding with the suit, rather learned counsel appearing on behalf of the petitioner has prayed for mercy.
8. From the record, it appears that the suit has been pending since 2014 and defendant filed written statement in the year 2022 and even thereafter on several occasions defendant remained absent on call. Ultimately Learned Judge found no other alternative but to reject the application for taking the suit off the *ex parte* board, by fixing date for *ex*

parte hearing.

9. This court considered both the sheer latches on the part of the defendant as well as the right of being heard. I find it justified to request the Learned Trial Judge to accept the written statement subject to payment of cost of Rs.25,000/- to be paid to the office of Calcutta High Court Legal Services Authority within one week after Puja Vacation, 2024 and to proceed with the suit after giving an opportunity of hearing to the parties, without giving any unnecessary adjournment. Thus, the order impugned stands set aside.
10. Learned Trial Judge is also requested to dispose of the suit pending since 2014 within six months from the date of reopening after Puja Vacation 2024.
11. With this observation, the revisional application stands disposed of.
12. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)

