

12.03.2024
Sl. No.24(DL)
srm

C.O. No. 4215 of 2023

Manju Ghose @ Manju Samanta @ Manju Naskar

Versus

Smt. Nandini N. Suchde

Mr. Gouranga Kumar Das,
Ms. Poulami Dutta

...for the Petitioner.

Ms. Madhurima Basu

...for the Opposite Party.

1. The revisional application has been filed challenging an order dated August 31, 2023 passed by the learned Civil Judge (Senior Division), Bidhannagar, North 24-Parganas, in Title Suit No.60 of 2019.
2. By the order impugned, the learned court did not accept the written statement filed by the defendant on August 14, 2023. Such refusal was based on the direction of this Court in C.O. No.487 of 2023.
3. Learned Advocate for the petitioner submits that the Advocate-on-record of the plaintiff in the trial court refused to accept the cost as directed to be paid by this court. As the cost was not paid, the written statement could not be filed. Ultimately, the written statement was filed without payment of cost.

4. Learned Advocate for the caveator submits that the notice of caveat was not accepted by the petitioner. It is further submitted that no attempts were made to pay the cost. Only to delay the proceedings before the learned court, the written statement was filed belatedly. Further attempt has now been made to move the High Court and keep the matter pending for a considerable period of time.
5. C.O. No.487 of 2023 was filed by the plaintiff challenging an order dated January 18, 2023. By the said order, the learned court had directed the cause title of the plaint be amended upon incorporating Manju Ghosh as a defendant. Learned Advocate submitted that the suit was for declaration and permanent injunction against Manju Samanta and the whole contention of the plaintiff was that the defendant was a caregiver of the deceased brother and not his wife. Thus, she could not be described in the plaint as Manju Ghosh. The order was set aside by this Court on the ground that allowing addition of the petitioner as Manju Ghosh in the suit would amount to pre-judging the issue of marriage as the plaintiff claimed to be the sole heir of her deceased brother and denied the alleged claim of marriage by Manju

Samanta. This Court observed that the burden was upon the opposite party to prove that she was Manju Ghosh, wife of Jayanta Ghosh by leading evidence. This Court held that the issue could not be pre-judged without any trial. However, written statement was allowed to be filed by the petitioner who was already arrayed as Manju Samanta in the suit. Such direction was for submission of the written statement within a week from the next date fixed in the suit, upon payment of cost of Rs.5,000/-.

6. Thus, two conditions were required to be fulfilled by the petitioner:

- (a) Cost of Rs.5,000/- to be paid to the learned Advocate of the plaintiff.

- (b) Filing of the written statement within a week from the next date fixed in the suit, upon payment of such cost.

7. Neither were complied with.

8. Under such circumstances, I do not find any reason to interfere with the order impugned as by order dated August 14, 2023 the learned court had recorded that although the written statement was filed on August 14, 2023 the cost had not been paid.

9. This Court had already passed an order on June 9, 2023. There cannot be any ground for this Court to either alter or modify the earlier order which had attained finality. It is not a situation where the petitioner came before this Court and prayed for an extension of time to deposit the costs on the ground that the learned advocate of the plaintiff was not receiving the cost. It is also not a case that the petitioner approached the learned Trial Judge with a plea that as the plaintiff's advocate was not accepting the cost, the learned court should pass orders directing deposit of cost in the court below or accept the written statement upon noting that the cost was not being accepted by the learned Advocate.
10. On the other hand, learned advocate for the plaintiff submits that the advocate for the plaintiff was not at all approached at any time. Such submission finds support from the fact that there is not a single scrap of paper in the records which would show that any letter or any application or any approach in any forum was made to the learned advocate for the plaintiff. Not a single application had been filed before the learned court.

11. Under such circumstances, I do not think that the petitioner deserves any further sympathy. The suit was of 2019 and till 2023 she had not filed her written statement. This court granted liberty to file the written statement after five years of filing of the suit and directed payment of cost of Rs.5,000/- for the delay. Such order was also not complied with.
12. Today, in March 2024 a plea that the written statement be accepted, cannot be allowed. The petitioner is not a diligent litigant and any order passed by this court will amount to misplaced sympathy.
13. The revisional application is, thus, dismissed.
14. There shall be no order as to costs.
15. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)