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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 4233 of 2024

Dinesh Sanchati
Versus
M/s. Majula Pvt. Ltd.

Mr. Gopal Chandra Ghosh
Mr. Supratim Dhar, Sr. Advocate
Mr. Dhananjay Nayak
... For the Petitioner.

Mr. Surya Chatterjee
Mr. Sib Sankar Das
Mr. Arjun Samanta
.... For the opposite party

1. The present revisional application has been filed, inter alia, challenging Order No.61 dated 20th November, 2024, passed by the learned Judge, Bench IX, City Civil Court, Calcutta in M. S. No. 345 of 2016.
2. The matter had been mentioned citing extreme urgency and on the basis thereof has been taken up for consideration.
3. It is the petitioner's case that the learned Court without disposing of the petitioner's application filed under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code" in short) for acceptance of the written statement has not only allowed the hearing of the suit continue but also refused the

defendant/petitioner to cross-examine the plaintiff's witness.

4. To understand the scope of the aforesaid revisional application it would be necessary to note down the facts giving rise to the aforesaid application.
5. It appears from the order sheets enclosed to the revisional application that the instant suit which is a money suit was instituted on 20th May, 2016. The sole defendant entered appearance in the suit on 13th July, 2016 and filed Vakalatnama and also prayed for time to file the written statement. Such prayer was considered and allowed. No written statement was, however, filed by the defendant. Instead, the defendant filed an application under Order VII Rule 11 of the Code which came to be rejected by an order dated 28th July, 2017. This apart, an application was also filed by the defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "said Act"). Such application was also rejected by an order dated 17th September, 2019. The defendant did not challenge the aforesaid orders before higher forum. In the interregnum, however, since the defendant did not file the written statement, the

suit was posted for ex parte hearing by an order dated 9th July, 2018, upon rejection of the defendant's application for an adjournment.

6. On 28th August, 2018, the only witness of the plaintiff was examined and upon his examination being completed, he was discharged. In course of the examination of the plaintiff's witness, the defendant did not appear. However, later, on that date, the defendant appeared and by a petition filed under Section 151 of the Code prayed for vacating of the order of ex parte hearing on the ground stated therein. No attempt appears to have been made by the defendant to seek recall of the plaintiff's witness for the purpose of cross-examining him. The aforesaid application filed by the defendant for removal of the suit from the ex parte board was rejected by the Order No. 22 dated 13th March, 2019. The learned Judge by such order had come to a finding that since, the application for vacating of the order of ex parte hearing was not accompanied by a written statement, the application could not succeed and had accordingly rejected the same. Since, August, 2018 the suit had not only been running in the ex parte board but after the witness action was over, was posted for arguments.

7. On 23rd April, 2019 the defendant had filed two separate applications; one under Section 8 of the said Act and other for stay of the suit. These applications as noted above came to be rejected by an Order No.29 dated 17th September, 2019. Still later, on 16th December, 2019, the defendant presented the written statement along with an application to set aside the order for *ex parte* hearing. On 1st April, 2021, the learned Court was inter alia pleased to pass the following order:-

“Today is fixed for order.

Both sides file Hazira.

Plaintiff is present through Ld. Counsel. None appears for the defendant in spite of call due to resolution of Bar. Date is postponed.

On Scrutiny of the case record, it appears that defendant’s application for set asiding the exparte hearing order dated 17.09.2019 which has been filed on 16.12.2019 along with acceptance of W.S. is pending with the order ‘be kept with the record’. It can be presumed from the order sheets that the defendant never move the said petition for consideration.

On the other hand, the earlier orders reflects that the case is ready for passing order.

It is to note that argument of the case has been made before the erstwhile P.O., hence a fresh

argument is to be heard.

Fix 21.04.2021 for hearing of the petition dated 16.12.2019 as filed by the defendant for ends of justice followed by hearing of argument afresh”.

8. By an order dated 14th May, 2024 the subsequent application under Section 151 of the Code filed by defendant to recall the order no.29 dated 17th September, 2019 whereby the application under Section 8 of the said Act was dismissed, was rejected on contest. It appears that on 4th September, 2024 the defendant once again filed yet another application under Section 151 of the Code, inter alia, praying that the application dated 16th December, 2019 filed under Section 151 of the Code seeking setting aside the order dated 17th September, 2019 be treated as an application for recall of order dated 9th July, 2018 be heard and disposed of. It is in connection with the same, that the learned Judge was pleased to pass Order No.61 dated 20th November, 2024 which forms the subject matter of challenge in the instant revisional application. Mr. Ghosh, learned advocate representing the defendant/petitioner strenuously argues that the learned Judge without adjudicating upon the application for acceptance of written statement has been

proceeding with the suit. No opportunity to cross-examine the plaintiff's witness was granted and that in the facts as noted hereinabove, the defendant should be given an opportunity to file written statement and to cross-examine the plaintiff's witness.

9. On the other hand, learned advocate representing plaintiff/opposite party would submit that repeated applications had filed by the defendant to stall the hearing of the suit. These applications apart from being abuse of process of Court, was a ploy to delay the hearing of the suit and the consequential decree that is likely to be passed in the plaintiff's favour. He would submit that in the instant suit, arguments have already been concluded and no further opportunity should be granted to the defendant to present its case any further.

10. Having heard the learned advocates appearing for the respective parties and having considered the materials on record as has been noted hereinabove, though the instant suit had been filed in the year 2016, and despite the fact that the defendant had taken time to file the written statement, on one ground or the other, the defendant did not file the written statement.

Faced on such circumstances, the learned Court had directed the matter to be placed for ex parte hearing vide order dated 9th July, 2018. On 28th August, 2018, the plaintiff's sole witness was examined in full and also discharged. Although, the defendant later appeared on that date, and applied by an application for setting aside of the order directing ex parte hearing, no prayer at that stage was made by the defendant to recall the plaintiff's witness.

11. Having regard thereto, it cannot be said that the learned Judge had refused to grant any opportunity to the defendant to cross-examine the plaintiff's witness. It would also transpire that even at that stage, the application for setting aside of the order of ex parte hearing was filed without the written statement. Such fact is noted in the order dated 13th March, 2019 when the learned Judge had been pleased to reject such application. Even thereafter no written statement was filed by the defendant. On the contrary, the defendant filed an application under Section 8 of the said Act which came to be rejected by an order dated 17th September, 2019. The defendant did not upto this stage file any written statement. Thereafter on 16th December, 2019, the written

statement was attempted to be slipped in, by filing a further application for setting aside of the order of ex parte hearing. Since, thereafter, the learned Judge by order dated 1st April, 2021 categorically returned a finding that the application dated 16th December, 2019 for setting aside of the order of ex parte hearing and for filing of the written statement was never moved. However, for ends of justice hearing of the application was fixed on 21st April, 2021. Incidentally on 21st April, 2021 the defendant did not appear. Still later, on 22nd April, 2022 the defendant filed another application under Section 151 of the Code for recall of the order dated 17th September, 2019, rejecting the application under Section 8 of the said Act. Records would reveal that by Order No. 57 dated 14th May, 2024 the learned Judge recording the entire facts was pleased to reject the application filed under Section 151 of the Code, filed on 22nd April, 2022. Having failed thus far, a further application was filed by the defendant under Section 151 of the Code seeking for disposal of a pending application dated 16th December, 2019 by treating the same as an application for recall of the order dated 9th July, 2018 and not as 17th September, 2019. The learned Judge by Order

No.61 dated 20th November, 2024 had rejected such application with cost of Rs.2000/-

12. Considering the conduct of the defendant and taking note of the fact that the defendant did not take any steps either to defend the suit or to cross-examine the plaintiff's witness despite being aware of the fact that the suit had been placed for ex parte hearing and plaintiff's witness had been examined, and further noting that the defendant was never interested to proceed with the hearing of the suit and had filed one application after another to stall the hearing of the suit and despite dismissal of the application under Section 8 of the said Act vide order dated 17th September, 2019, had once again moved a fresh application for recall of such order, on 22nd April, 2022 only to stall the hearing of the suit, without pressing for hearing of the application dated 16th December, 2019 as would appear from the order dated 14th March 2022 and 22nd April, 2022, I am of the view that no relief can be afforded to the defendant/petitioner. Although an attempt was made by the petitioner to contend that it had sought permission to cross-examine the plaintiff's witness by way of recall, I am of the view that the learned Judge has rightly by Order

No. 61 dated 20th November, 2024 recording that defendant did not avail the right to cross-examine the plaintiff's witness and instead filed several applications one after another, had accordingly rejected of the defendant's prayer. In any event the above application filed on 22nd April, 2022 was considered and rejected by the learned Judge by the order dated 20th November, 2024. Having regard thereto, it cannot be said that the learned Court had proceeded with the hearing of the suit without disposing of the application filed by the petitioner for removal of the suit from ex parte board or for accepting of the written statement. Having regard to the conduct of the petitioner, I am of the view that no interference is called for.

13. The revisional application, being CO 4233 of 2024 is accordingly dismissed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)