

S/L. 102.
March 20, 2025.
KAUSHIK.

C.O. 862 of 2025

Syed Mahmud Ul Hasain & Ors.
Vs.
Iqbal Hossain & Ors.

Mr. Partha Pratim Roy
Mr. Syed Nasim Aeja
... for the petitioner.

Mr. Sanjoy Mukherjee
... for the Opposite Parties.

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated February 21, 2025 passed by the learned Additional District Judge, Fast Track 1st Court at Alipore, South 24-Parganas in Title Appeal No. 79 of 2022.

Mr. Roy, learned advocate for the petitioner submits that February 21, 2025 was fixed for hearing of the application under Order 41 Rule 27 of the Code of Civil Procedure and for giving reply on the point of law by the learned advocate of appellants/petitioners herein. He submits that since the learned senior counsel could not reach Court on time, a prayer for adjournment was made but the same was rejected. Mr. Roy, learned advocate for the petitioner further submits that one opportunity be given to the petitioner to move the application

under Order 41 Rule 27 of the Code of Civil Procedure and to give reply on the point of law.

Mr. Mukherjee, learned advocate appearing on behalf of the opposite parties vehemently opposes the prayer of Mr. Roy. He submits that the application under Order 41 Rule 27 of the Code of Civil Procedure was filed at the belated stage. He further submits that the documents which the petitioners are now seeking to rely upon and produce by way of additional evidence were in fact tendered by the petitioner in course of evidence and the same was marked as 'X' for identification.

Heard the learned advocates for both the parties and perused the materials on record.

After going through the order sheet, this Court finds that February 21, 2025 was fixed for giving reply on the law points by the learned advocate for the appellants/petitioners and for hearing of application under Order 41 Rule 27 of the Code of Civil Procedure dated February 12, 2025. When the matter was taken up on February 21, 2025, an adjournment was sought for on the ground that the learned senior counsel engaged in the matter was on his way from the Hon'ble High Court at Calcutta and he will be present before the Alipore Court by 2.30 p.m. and a 'pass over' was prayed for till 2.30 p.m. The

learned Judge accordingly deferred the hearing of the matter till 2.30 p.m. When the matter was taken up at 2.30 p.m., neither the learned advocate on record of the appellant nor the senior counsel were found present. The learned Judge by the order dated February 21, 2025 (at 2.30 p.m.) closed the argument and the application under Order 41 Rule 27 of the Code of Civil Procedure stood rejected. At about 3.30 p.m., the appellant filed an adjournment petition for fixing another date of hearing. The learned Judge, however, rejected the prayer for time by order dated February 21, 2025.

After going through the series of orders passed on February 21, 2025, this Court finds that the appellants/petitioners herein were trying to delay the hearing of the title appeal.

To the mind of this Court when the petitioners appointed an advocate to conduct his case and has done what is expected from a litigant, such litigant should not be penalized for the delay on the part of the learned advocate in reaching the Court.

That apart the right of appeal is a statutory right provided under Section 96 of the Code of Civil Procedure and since for giving reply on the point of law the date was fixed on February 21, 2025, this Court is inclined to afford a last

opportunity to the appellants/petitioners herein to give reply on the points of law, however, subject to payment of cost by the petitioners/appellants herein to the opposite parties.

At this stage, Mr. Mukherjee, learned advocate for the opposite party submits that the cost may be directed to be paid to the Calcutta High Court Bar Association Lawyers' Benevolent Fund instead of paying to the opposite parties.

For the reasons as aforesaid, only the portion of order impugned dated February 21, 2025 (at 2.30 p.m.) whereby the argument of the appellants/petitioners herein stood closed stands set aside subject to payment of cost of Rs.10,000/- by the petitioner herein to the Calcutta High Court Bar Association Lawyers' Benevolent Fund on or before 5 p.m. today (i.e. February 20, 2025). In default of payment within the time limit as stipulated herein before this order shall automatically stand recalled without any further reference of this Court.

After going through the materials placed, this Court finds that the documents which the petitioners are now seeking to introduce by way of additional evidence was produced by the petitioners before the learned Trial Judge at the stage of evidence and the same was marked 'X' for identification and the petitioner herein did not

take any steps for proving the said documents in accordance with law. This Court is, therefore, of the considered view that the petitioner could not satisfy the grounds for producing the documents by way of an additional evidence at such a belated stage. For such reasons, this Court is not inclined to interfere with the portion of the order dated February 21, 2025 (at 2.30 p.m.) by virtue of which the application under Order 41 Rule 27 of the Code of Civil Procedure was rejected.

Since tomorrow, i.e. March 21, 2025 has been fixed for delivery of judgment, this Court gives liberty to the parties to approach before the learned Trial Judge tomorrow and pray for fixing an early date of argument. If such prayer is made, the learned Additional District Judge, Fast Track 1st Court at Alipore, South 24-Parganas shall fix a short date for argument by the appellants/petitioners herein.

With the above observations and directions, CO 862 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)