

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.1043 of 2018
Sadananda Ganguli
VS.

Srimati Rita Bhattacharyya & Anr.

Petitioner in-person :Mr. Sadananda Ganguli.

For the Opposite Party :Mr. Siva Prosad Ghose, Adv.

Last Heard On :24.03.2025

Judgement On :22.05.2025

Bibhas Ranjan De, J. :

1. The Instant civil order has been filed assailing order no. 94 dated 18.12.2017 passed by the Ld. Civil Judge, Junior Division, 4th Court, Sealdah in connection with Title Suit No. 87 of 1995 wherein Ld. Trial Judge allowed one application dated 14.12.2017 filed by the defendant and recalled the order dated

11.12.2017 subject to payment of cost of Rs. 3,000/- by the defendant to the plaintiff.

- 2.** Facts of the case in brief is that the petitioner is the owner of the subject premises (shop room) which was transferred to one Paritosh Bhattacharyya, predecessor-in-interest of the opposite parties, by a registered deed of lease dated 19.12.1973 for 21 years commencing from 01.01.1974 and which was to expire on Last day of December 1994.
- 3.** After expiry of the lease, said Parithosh Bhattacharyya did not quit and vacate the said shop room and in effect petitioner filed a suit being no. TS 87 of 1995 with a prayer for recovery of possession of the said shop room along with other consequential reliefs.
- 4.** After filing of the suit, notice was served by the bailiff by hanging it both at the residence of the predecessor-in-interest of the opposite parties and also in the shop room. On 6th May, 2024 predecessor-in-interest of the opposite parties filed an application with a prayer for time to file written statement on 06.05.2004 and time was granted till June 25.06.2004. However, on 28.10.2005 none appeared on behalf of the predecessor-in-interest of the opposite parties on repeated calls and in the

result, the show cause petition was rejected and suit was fixed for ex-parte hearing on 10.02.2006. On the day of ex-parte hearing, examination-in-chief supported by affidavit was filed but at the same time predecessor-in-interest of the opposite parties filed a petition showing cause of delay in filing written statement on account of non-supply of copy of the plaint. However, on 22.08.2006 Ld. Trial Judge accepted the written statement after condoning delay subject to payment of cost of Rs. 800/-. Being aggrieved petitioner/ plaintiff of the suit preferred a revision application being no. CO 4297 of 2006 before the Hon'ble High Court wherein Hon'ble Co-ordinate Bench directed Ld. Trial Judge to dispose of the suit within six (6) months from the date of communication of the order without interfering with the order of acceptance of written statement by the Ld. Trial Judge.

- 5.** On 13.09.2017 petitioner was partly cross examined but subsequently on 20.11.2017 and on 11.12.2017 none appeared on behalf of the predecessor-in-interest of the opposite parties. Finally on 11.12.2017 Ld. Trial Judge heard Ld. Counsel appearing on behalf of the petitioner/plaintiff and fixed a date for pronouncement of judgment on 18.12.2017.

6. At this stage, predecessor-in-interest of the opposite parties filed one application on 14.12.2017 with a prayer for recalling the order dated 11.12.2017. Pursuant to the put up application, Ld. Trial Judge fixed hearing of the application for recalling the order dated 11.12.2017 on 18.12.2017. After hearing, the order impugned in this civil order was passed.

At the Bar:-

7. Mr. Sadananda Ganguli, appearing in-person, at the very outset by referring to the judgment of this court in connection with CO 4297 of 2006 has submitted that the Ld. Trial Court ought not to have granted any further opportunity to the opposite party when this Hon'ble Court already gave a clear direction to dispose of the suit within six (6) months positively.
8. Mr. Ganguly further argued that once the hearing of a suit is concluded and closed for judgment, Order IX Rule 7 of the code of Civil Procedure (for short CPC) has no application at all which is further crystallized from the very language of the provision itself. He further continued that once pronouncement of judgment is reserved, no question of further proceedings in the suit arises merely because the defendant appeared on the date fixed for appearance.

9. Before parting with, Mr. Ganguly has vehemently contended that a party to the suit is not at liberty to proceed with the trial at its own leisure and pleasure and has no right to determine when the evidence would be let in by it. The parties to a suit whether plaintiff or defendant must co-operate in ensuring the effective work on the fixed date for hearing. Therefore, Mr. Ganguly has tried to make this Court understand that the Ld. Trial Judge ought to have delivered the judgment on the evidence already adduced without prying into the track of allowing the opposite parties further undue and unnecessary allowances.

10. In support of his contention, Mr. Ganguly has taken assistance of the following cases:-

- ***Rasiklal Manikchand Dhariwal and another vs. M.S.S. Food Products, (2012) 2 Supreme Court Cases 196***
- ***M/s. Shiv Cotex vs. Tirgun Auto Plast P. Ltd. & ors., 2011 AIR SCW 5789.***

11. In opposition to that, Ld. Counsel, Mr. Siva Prosad Ghose, appearing on behalf of the opposite parties has submitted that the original defendant used to conduct the eviction suit with his appointed advocate through his clerk (since deceased) in whose custody the briefs and documents connected with the eviction

case was lying. But, due to sudden death of the said clerk, original defendant was unable to trace the required documents when the suit was already on an advanced stage. Thereafter, he made a communication with his present advocate who *in tern* through the cause list of the Court figured out that the suit has been heard ex-parte on 11.12.2017 and date was fixed for delivery of judgment on 18.12.2017. Immediately afterwards, Ld. Counsel for the opposite parties filed a petition with a prayer for recalling of the order dated 11.12.2017 passed by the Ld. Trial Court.

12. After careful consideration, the Ld. Trial Court observed that keeping in mind the principle of natural justice and for just adjudication of the *lis* the defendant ought to be given an opportunity to contest the instant suit as he was all along appearing in the suit proceedings. In addition to that, the Ld. Trial Judge also imposed cost of Rs. 3000/- on the defendant which was to be paid to the plaintiff. Mr. Ghosh through the above submission has firmly stated that there is no irregularity or perversity in the order impugned.

13. Before parting with, Mr. Ghosh through assistance of the cited judgment has argued that the Hon'ble Apex Court is of the

opinion that trial process should not prematurely be halted or confined as it could lead to a miscarriage of justice and violation of the party's rights. Since a Court cannot prevent a party from introducing relevant and admissible evidence.

14. In order to bolster his above contention, Mr. Ghosh has referred to the following case:-

- ***High Court Bar Association, Allahabad vs. State of U.P. & Ors., 2024 INSC 150***

Analysis:-

15. Having heard the rival submissions adduced on behalf of the parties as well as after going through the materials available on record, the main contentious issue involved in this revision application revolves around the sole determining factor i.e. whether Trial Court can recall its own order of fixing of date for delivery of judgment after ex-parte hearing at a belated stage based on a petition filed at the behest of the opposite party for recall of the same.

16. Before delving into the intricacies of the case at hand, the most vital facet of this application needs to be looked into a bit more carefully. Therefore, for brevity of discussion, the observation of the Ld. Trial Court needs to be reproduced.

Observation of the Ld. Trial Judge:-

17. Findings recorded by the Ld. Trial Judge is reproduced below:-

“Order co. dated 18.12.17

Today is fixed for hearing of the petition dated 14.12.17 filed by the Defendant and for delivery of judgment.

The petition dated 14.12.17 filed by the Defendant is taken up for hearing. No written objection against the said petition has been filed by the Plaintiff, but, Ld. Advocate appearing on behalf of the Plaintiff has raised verbal objection against the said petition.

Heard Ld. Advocates for the respective parties. Considered.

The Defendant has filed the instant petition supported by an affidavit contending that the Plaintiff has filed the instant suit for recovery of khas possession. All along the Defendant was contesting the instant suit. Sri Pradip Pal: the clerk of the Ld. Advocate appearing for the Defendant died few months back. So, the Defendant could not find out relevant documents and Paper along with the brief of the instant suit and finding no other way the Defendant contacted his present Advocate and came to know from the cause list of this Court that the suit has been heard ex- parte by this Court on 11.12.17 and the date (18.12.17) has been fixed for delivery of judgement. Under such circumstances, the Defendant has filed the instant petition praying for recalling of the order dated 11 12.17 passed by this Court.

On perusal of the petition dated 14.12.17 filed by the Defendant and after going through the materials on record and considering the submissions made by the Id. Advocates for respective parties, it appears to this Court that the Defendant was all along contesting the ant suit but did not take steps on 20.11.17 and 11.12.17. Though the Defendant has filed the instant petition praying for recalling the order

dated 11.12.17 passed by this Court, thereby giving him an opportunity to contest the instant suit at a belated stage that is just before passing of judgment, but, it is to be mentioned here that considering the principles of natural justice and for proper adjudication of this case, the Defendant ought to be given an opportunity to contest the instant suit.

In view of the aforesaid discussion, this Court is inclined to allow the prayer of the Defendant subject to payment of cost of Rs. 3000/- by the Defendant to the Plaintiff.

Hence, it is

ORDERED

That the petition dated 14.12.17 filed by the Defendant be and the same is allowed on contest and disposed of. The order no 92 dated 11.12.17 passed by this Court is hereby recalled subject to payment of cost of Rs. 3000/- by the Defendant to the Plaintiff.”

18. The specific structure of enactment of the CPC is comprehensive and exhaustive in respect of the matters provided therein. The specific procedure provided therein is extremely rational and elaborate. Fair procedure is its hallmark and the Courts of civil judicature also need to adhere to the settled procedures. Whenever a discretion is conferred upon the Court by the Code, it has to be exercised judiciously. No whimsical arbitrary or capricious usage of discretion is permissible in the eye of law. In my humble opinion, the Ld. Trial Court possesses inherent discretion to re-call or re-consider the orders even when

a judgment date is fixed provided they fall within specific compelling circumstances.

19. In the case at hand, a minute dissection of the impugned order would make it clear that the defendant did indeed appear and contest the suit. But, for whatever reason, he was not represented on specific dates which led to ex-parte hearing and fixing of date for delivery of judgment. But, when he filed the petition belatedly, the Ld. Trial Court exercised his discretion and jurisdiction to give an opportunity to the opposite parties to prove their case so that there could be a contested hearing of the suit in the interest of natural justice, that too after imposing a cost of Rs. 3000/- on the opposite parties, on that score I am also not at all inclined to interfere with such order as I hardly find any substantial reason to do the same.

20. The Hon'ble Apex Court also has clarified time and again that the Courts in the interest of natural justice and for just decision of the dispute, can entertain applications for re-call or review even after the stage of fixing of date for delivery of judgment depending on the attending facts and circumstances of each case. Now, coming to the instant issue, the Ld. Trial Judge through the order impugned duly considered the factual matrix

and used his discretion to allow such re-call application. I am unable to concur with the submission made at the behest of the petitioner that there was any use of whimsical or arbitrary usage of discretion which would need necessary interference by this Court.

21. In the above conspectus, the instant revision application no. CO 1043 of 2018, being devoid of merits, stands dismissed.

22. However, it has come to my notice that the Hon'ble Coordinate Bench of this Court disposed of a revision application being CO 4297 of 2006 with a direction to dispose of this suit within six (6) months from the date of communication of the order. Therefore, I find it necessary to remind the Ld. Trial Judge yet again that considering the long pendency of the suit which is lying for a substantial period of time i.e. since 1995, he is to **positively dispose of the application within six (6) months from date** without affording any unnecessary adjournment to either of the parties.

23. Department is directed to send a copy of this Order to the Ld. Trial Court for strict compliance.

24. Parties are also at liberty to communicate this Order to the Ld. Trial Court for necessary information.

- 25.** Interim Order, if there be any, stands vacated.
- 26.** Connected applications, if there be, also stand disposed of accordingly.
- 27.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 28.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]