

Court No. 6
(265719)

28.04.2025
(AD 15)
(S. Banerjee)

CO 1380 of 2025

Sri Ranjan Sarkar
Vs.
Smt. Kumkum Das & Ors.

Mr. Souvick Mitra
Ms. Shetparna Ray

...for the petitioner

Mr. Mrinal Kanti Ghosh
Mr. Chandra Nath Sarkar
Mr. Prosun Mondal

...for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 42 dated January 24, 2025 passed by the learned Additional District Judge, 5th Court, Barasat in OS No. 8 of 2018, arising out of Misc. Case No. 50 of 2017(P).

By the order impugned the prayer for adjournment was rejected and the evidence of the plaintiff stood closed and a date was fixed for evidence of the PW.

The learned advocate appearing for the petitioner submits that there was a change of advocate and the prayer for adjournment was made as the newly appointed advocate required time to scrutinize the records.

Mr. Ghosh, learned advocate for the opposite parties opposed the prayer of the learned advocate of the petitioner. He draws the attention of the court to the order dated July 9, 2024 wherein the learned trial Judge specifically recorded that the case is pending since the year 2018 and till date the plaintiff only has examined herself as PW-1 and no steps were taken to produce the attesting witnesses of the will before the Court.

However, fact remains that the suit is a probate suit and unless an opportunity is granted to the plaintiff to adduce evidence, the petitioner will suffer irreparable loss and injury. At the same time, the petitioner is to be put to terms as it is evident from the materials on record that the petitioner is trying to delay the hearing of the suit.

In view thereof, the impugned order is set aside subject to the condition that the petitioner shall pay a cost of Rs. 5,000/-to the opposite parties within a period of seven days from date.

It appears from the record that May 15, 2025 has been fixed for evidence of OPW.

If the cost as directed hereinbefore is paid within the time-limit as stipulated, the learned trial Judge shall allow the plaintiff to lead further evidence

on the next date, i.e., on May 15, 2025 and to proceed with the suit in accordance with law.

It is, however, made clear that if the cost is not paid within the time as stipulated above, this order shall stand recalled without any further reference to this Court.

The learned trial Judge is requested to dispose of OS 8 of 2018 as expeditiously as possible but preferably by the end of December, 2025 without granting any unnecessary adjournment to either of the parties.

With the above observation and direction, CO 1380 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)