

D/L- 14
21/05/2025
Ct. No.-6
Aritra

C.O. 1524 of 2025

**Jayasree Majumdar & Ors.
Vs.
Biju Devi Bhansali**

Mr. Partha Pratim Roy
Mr. Debajyoti Mondal

....for the petitioner

Mr. Amal Krishna Saha
Mr. Anshunath Chakraborty

....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated March 29, 2025 passed by the learned Judge, 9th Bench, City Civil Court at Calcutta in Miscellaneous Appeal No.2 of 2024 affirming the order being No.255 dated December 11, 2023 passed by the learned Judge, 6th Bench, Presidency Small Cause Court at Calcutta in Miscellaneous Case No.121 of 2017.

The opposite party herein filed a suit for eviction against the predecessor in interest of the petitioners herein in the grounds mentioned under Section 13(1) of the West Bengal Premises Tenancy Act, 1956 which was subsequently re-numbered as Ejectment Suit No.329 of 2000.

The learned Judge, 6th Bench, Presidency Small Cause Court at Calcutta decreed the said suit *ex parte* by a judgment and decree dated April 7, 2017.

During the pendency of the said suit the original tenant/defendant died and the petitioners were substituted in place and stead of the deceased original defendant.

The petitioners herein filed an application under Order 9 Rule 13 of the Code of Civil Procedure being Miscellaneous Case No.121 of 2017 praying for setting aside the *ex parte* decree dated April 7, 2017 passed in Ejectment Suit No.329 of 2000.

The learned Judge, 6th Bench, Presidency Small Cause Court at Calcutta by an order being No.255 dated December 11, 2023 dismissed the said miscellaneous case.

Being aggrieved by such order the petitioners preferred a miscellaneous appeal being No.2 of 2024 and the learned Judge, 9th Bench, City Civil Court at Calcutta, by a judgment and order dated March 29, 2025, dismissed the said miscellaneous appeal. Being aggrieved by the order passed by the learned Judge, 9th Bench, City Civil Court at Calcutta in Miscellaneous Appeal No.2 of 2024, the petitioners approached this Court by filing an application under Article 227 of the Constitution of India.

Mr. Roy, learned advocate appearing for the petitioners submits that the original defendant died during the pendency of the suit and after substitution of the present petitioners in place and stead of the

deceased original defendant summons were not served upon the petitioners. He further submits that the petitioners entrusted one Mr. Swapan Mullick, learned advocate to defend the said eviction suit. Mr. Roy further submits that in the meantime Mr. Mullick passed away and for such reason the eviction suit got decreed *ex parte* beyond the knowledge of the petitioners.

Per contra, Mr. Saha, learned advocate appearing for the opposite party seriously disputes the submission of Mr. Roy. He submits that after the substitution of the heirs and heiress of the original deceased defendant summons of the suit were served upon the petitioners and the petitioners entered appearance in the said suit through one Mr. Somnath Dawn, learned advocate. However, for reasons best known to the petitioners, steps were not taken in the eviction suit. Mr. Saha submits that the petitioners are trying to delay the execution of the eviction decree by filing frivolous applications and appeals before different forums.

Heard the learned advocates for the parties and perused the materials placed.

Record reveals that upon the death of the original defendant, namely, Sib Krishna Majumder, the petitioners were substituted vide order dated July 28, 2005. Report of the Court bailiff records that the petitioner No.3 herein, name, Ranita Majumdar accepted

summons on behalf of all the heirs of the deceased defendants on September 23, 2005. It further appears that the petitioners entered appearance in the said suit by filing vakalatnama on September 30, 2005. The petitioner No.1, who adduced evidence as P.W. 1 in the miscellaneous case was cross-examined with regard to the vakalatnama dated September 30, 2005 and during her cross-examination on September 14, 2022, she admitted the fact that the vakalatnama was filed on behalf of her son and daughter. The P.W. 1 also admitted that the summons of the ejectment suit was served. She further admitted that Ranita Majumdar got married in the year 2011 i.e. long after the summons of the suit was served upon her at the tenanted premises. The said witness further admitted her signatures which have been marked as Exhibit-A and A/2. She also admitted that the summons dated May 14, 2015 was received by her employee Goutam Das, whose signature was marked as Exhibit-B on the admission of P.W. 1.

Record further reveals that during the pendency of the eviction suit the plaint was amended and thereafter the summons was again served to all the petitioners as would be evident from Exhibit-A series.

The learned trial judge took note of the contention of the petitioners that they engaged Mr. Swapan Mullick, who died all of a sudden on February 3, 2017 and after considering the records of the trial court, the learned

Judge observed that the petitioners engaged Mr. Somnath Dawn, learned advocate to represent themselves in the original Ejectment Suit No.329 of 2000.

From the application filed under Order 9 Rule 13 of the Code of Civil Procedure which has been annexed at page 20 of the civil revision application, this Court finds that Mr. Somnath Dawn also was the advocate on record of the petitioners in Miscellaneous Case No.121 of 2017. Thus it is evident that the petitioners engaged Mr. Somnath Dawn to represent themselves in the original suit as well as in the application under Order 9 Rule 13 of the Code of Civil Procedure. It is not the case of the petitioners that Somnath Dawn, learned advocate did not take any steps in the eviction suit or that he acted in a manner which is detrimental to the interest of the petitioners.

The learned trial judge after considering the materials on record arrived at a factual finding that the petitioners after being substituted as defendants were served with the summons and thereafter the summons was served for the second time after the plaint was amended. In the light of such factual finding the learned trial judge arrived at a conclusion that the materials on record does not reveal that the petitioners were prevented by sufficient cause from attending the Court when the matter was fixed for hearing. The

learned trial judge of the Appellate Court also took note of the materials on record, considered the submission made by the learned advocate for the petitioner and assigned cogent reasons for affirming the findings of the learned trial judge recorded the order passed in Miscellaneous Case No.121 of 2017.

It is well-settled that in exercise of power under Article 227 of the Constitution of India the concurrent findings of fact arrived at by the learned trial judge as well as the First Appellate Court cannot be interfered with unless there is perversity in such factual finding.

In course of hearing of argument Mr. Roy, learned advocate for the petitioner failed to demonstrate any perversity in the judgments and orders impugned warranting interference under Article 227 of the Constitution of India.

For all the reasons as aforesaid, this Court is not inclined to interfere with the orders impugned.

Accordingly, CO 1524 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)