

Court No. 6
(265719)

16.05.2025
(AD 12)
(S. Banerjee)

CO 1688 of 2025

Dr. Mousumi Chatterjee
Vs.
The Branch Manager, Muthooth Finance Ltd. & Ors.

Mr. Sayan Ray
Mr. Samrat Choudhury

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against orders being nos. 81 and 82 dated August 21, 2024 and November 29, 2024 respectively, both passed by the learned Judge, 8th Bench, City Civil Court at Calcutta in Title Suit No. 221 of 2016.

By the order dated August 21, 2024, the application filed by the defendants/opposite parties herein under Order 9 Rule 7 of the Civil Procedure Code, was allowed subject to payment of cost.

By the order dated November 29, 2024, it was recorded that the defendant has paid the cost and the original money receipt was filed before the learned trial judge.

Learned advocate appearing for the petitioner submits that the learned trial judge, by the order impugned, took off the suit from the ex parte board and restored the suit to its original file without assigning any reasons in support of the ultimate conclusion.

Order 9 Rule 7 of the Civil Procedure Code deals with the procedure where the defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance. It states that where the court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Learned advocate for the petitioner submits that the suit was fixed for ex parte hearing by an order dated August 18, 2017.

It appears from the order-sheet produced by the learned advocate appearing for the petitioner in course of the hearing of this application that on March 19, 2024, the application for temporary injunction was disposed of and the learned trial judge directed that due to absence of the defendant let the

suit be heard ex parte against them. Therefore, it appears that the suit was directed to be heard ex parte by an order dated March 19, 2024.

On July 22, 2024, the opposite parties filed an application under Order 9 Rule 7 of the Civil Procedure Code.

After going through the said application this court finds that it is the specific case of the defendants that they had engaged a counsel and entrusted the counsel with the instant suit and the defendants kept enquiring about the status of the instant suit from the said advocate and the advocate also kept the defendants informed about the date of hearing fixed in the said matter. It is further stated in the said application that on or about June, 2024, the counsel stopped updating the dates of the present matter to the defendants even after enquiry being made by the defendants in that regard. Thereafter, the defendants after enquiry came to know that the suit has been fixed for ex parte hearing on July 22, 2024 and on that date the application was filed.

After going through the averments made in the said application this court is of the considered view that the defendants engaged an advocate and kept on enquiring about the said case from the counsel. Thus the defendant did whatever is expected to be done by

a litigant. The defendant cannot be faulted for depending upon the learned advocate.

It is well settled that a litigant should not suffer any prejudice for the laches, if any, on the part of the learned advocate.

The reasons assigned in the application under Order 9 Rule 7 of the Civil Procedure Code, in the considered view of this court, falls within the expression “good cause” as contained in Rule 7 of Order 9 of the Civil Procedure Code.

To the mind of this court the learned trial judge was right in allowing the application under Order 9 Rule 7 of the Civil Procedure Code thereby taking off the suit from the ex parte board. For the reasons as aforesaid, this court is not inclined to interfere with the order impugned.

After this order was dictated, the learned advocate appearing for the petitioner prays for a direction upon the learned trial judge to dispose of the suit expeditiously.

In the light of the submission made by the learned advocate appearing for the petitioner, CO 1688 of 2025 stands disposed of without interfering with the order impugned but by requesting the learned Judge, 8th Bench, City Civil Court at Calcutta

to make an endeavour to see that Title Suit No. 221 of 2016 is disposed of as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

(Hiranmay Bhattacharyya, J.)