

Court No. 6
(265719)

08.08.2025
(AD 4)
(S. Banerjee)

CO 2673 of 2025

Sudhir Tewari
Vs.
Subodh Mukherjee & Ors.

Mr. Mrinal Kanti Ghosh
Mr. Rabi Ghosh

...for the petitioner

Mr. Debraj De
Mr. Rashin Singh

...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 March 28, 2025 passed by the learned Civil Judge (Jr. Division) 1st Court at Barrackpore in Title Suit No. 306 of 2022. By the impugned order the application under Section 151 of the Civil Procedure Code praying for vacating the ex parte hearing, stood rejected.

Mr. Ghosh, learned advocate appearing for the petitioner submits that on March 28, 2025 an adjournment was prayed for on the lawyer's ground but such prayer was rejected by the impugned order and the application under Section 151 of the Civil Procedure Code also stood rejected.

Learned advocate appearing for the opposite parties submits that the petitioner did not file any written statement in the said suit and accordingly the suit was fixed for ex parte hearing on April 5, 2023. He further submits that the opposite party is a 86 years old man and the petitioner is harassing an octogenarian by dragging the suit on frivolous ground. He submits that all the witnesses of the plaintiffs have been examined and at this stage the order impugned should not be interfered with. He further submits that the adjournment prayer was also not moved.

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

It appears from the record that an application was filed by the defendant no. 4/petitioner herein praying for vacating the ex parte hearing. Such application was fixed for hearing on March 28, 2025. However, a prayer for adjournment was sought for on lawyer's ground.

Considering the fact that a litigant should not suffer due to the absence of the lawyer, this court is inclined to grant a last opportunity to the petitioner to move the application under Section 151 of the Civil Procedure Code subject to payment of cost of

Rs. 10,000/- -by the petitioner to the opposite party no. 1 herein.

Learned advocate appearing for the opposite parties submits that August 20, 2025 is the next date fixed in the said suit.

CO 2673 of 2025 stands allowed. The order dated March 28, 2025 stands set aside. The application under Section 151 of the Civil Procedure Code filed by the defendant no. 4 praying for vacating the order of ex parte hearing stands restored to the file of the learned Civil Judge (Jr. Division) 1st Court at Barrackpore subject to payment of cost of Rs. 10,000/- by the petitioner to the opposite party no. 1 herein within a week from the date of receipt of a server copy of this order.

If the aforesaid amount is paid within the time limit indicated hereinbefore, shall be taken up for hearing the application under Section 151 of the Civil Procedure Code on the next date fixed, i.e., on August 20, 2025, and the same be disposed of on that date. If for some reason the same cannot be disposed of on that date, the learned trial judge shall make an endeavour to fix an early date for hearing of such application and make an endeavour to dispose of the same as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

After disposal of the said application, the learned trial judge is requested to make an endeavour to dispose of Title Suit No. 306 of 2022 as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

It is, however, made clear that if the cost is not deposited within the time limit mentioned hereinbefore, this order shall stand automatically recalled and the impugned order shall stand revived without any further reference to this court.

(Hiranmay Bhattacharyya, J.)