

Court No. 6
(265719)

28.08.2025
(AD 3)
(S. Banerjee)

CO 2796 of 2025

Rajesh Kumar Sethia & Anr.
Vs.
M/s. Calcutta Stores Co.

Mr. Sujit Banerjee

... for the petitioners

Mr. Prabhjot Singh

... for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against orders dated September 25, 2024 and February 11, 2025, both passed by the learned 2nd Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 261 of 2021. By the order dated September 25, 2024, the prayer for adjournment of the hearing of the application under Order 39 Rule 7 of the Civil Procedure Code, was allowed subject to payment of cost of Rs. 5,000/-. The petitioners filed an application under Section 151 Civil Procedure Code for recalling the said order and the learned trial judge by the order dated February 11, 2025 rejected the application under Section 151 of the Civil Procedure Code with cost of Rs. 1,000/-.

Learned advocate appearing for the petitioners submits that the adjournment was sought for on medical ground of the learned advocate appearing for the petitioners. He further submits that the petitioners should not be made to suffer for non-appearance of the learned advocate on the date fixed for hearing of the application for local inspection.

Mr. Singh, learned advocate appearing for the opposite party submits that the petitioner prayed for adjournments on several occasions on frivolous grounds. He submits that Order 17 Rule 1 of the Civil Procedure Code permits the court to impose cost as a condition for granting adjournment. In support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of *Shiv Cotex – Vs.- Tirgun Auto Plast Private Limited*, reported at (2011) 9 SCC 678.

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

The petitioners filed a suit for eviction on the grounds contained in Section 6 of the West Bengal Premises Tenancy Act, 1997. Record reveals that the suit was transferred from the bench of the learned Chief Judge, Presidency Small Causes Court, Calcutta to the learned Judge, 2nd Bench, Presidency Small Causes Court, Calcutta on May 10, 2024. Since

the learned presiding officer was on leave on July 26, 2024, the hearing of the application for local inspection was adjourned to September 25, 2024. On September 25, 2024 a prayer for adjournment was made on the ground of the illness of the learned advocate for the petitioner. Since the prayer for adjournment was not supported by any medical document, the learned trial judge allowed the prayer for adjournment with cost of Rs. 5,000/- to be paid by the petitioners to the opposite party within the time limit mentioned in the said order. Petitioners prayed for recalling of the said order by filing an application under Section 151 of the Civil Procedure Code which was rejected by the order dated February 11, 2025. In the application under Section 151 of the Civil Procedure Code it has been stated that the learned advocate-on-record failed to appear before the learned trial judge on September 25, 2024 due to his illness and also that the father-in-law of the learned advocate was seriously ill and he had to be taken to the hospital on September 24, 2024. The medical documents in support of the health condition of the father-in-law of the learned advocate for the petitioners has been annexed to this civil revision application. It is not in dispute that the suit has not yet reached the stage of evidence. The hearing of the

application for local inspection was fixed on September 25, 2024.

Order 17 Rule 1 of the Civil Procedure Code states that the court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing. The proviso thereto states that no such adjournment shall be granted more than three time to a party during hearing of the suit.

As observed hereinbefore, the suit is yet to reach the stage of hearing. Therefore, the provisions of Order 17 Rule 1 of the Civil Procedure Code does not stand attracted to the case on hand.

That apart, the adjournment was sought for on the medical ground of the learned advocate of the petitioners. A litigant should not made to suffer in case the learned advocate fails to appear on the ground of illness. For such reason, this court is inclined to interfere with the orders impugned.

In *Shiv Cotex (supra)* the suit was fixed for evidence of the plaintiff and on such date no evidence was led in and the matter was adjourned for the evidence of the plaintiff on a subsequent date and in the facts of that case it has been recorded that the

plaintiffs did not produce evidence on repeated occasions. On such factual matrix the Hon'ble Supreme Court observed that the absence of lawyer or non-availability because of his professional work in other court or elsewhere on the ground of strike called or change of lawyer or the continuous illness of the lawyer will not justify more than three adjournments. In the case on hand, the adjournment on the ground of illness of the learned advocate was prayed for on September 25, 2024. The facts in the case of *Shiv Cotex (supra)* being distinguishable, the same cannot come to the aid of the opposite party.

In the light of the observations made hereinbefore the impugned orders are set aside. The learned trial judge is requested to take up the hearing of the application under Order 39 Rule 7 of the Civil Procedure Code on the next date fixed and to make an endeavour to dispose of the same as expeditiously as possible, preferably within a period of four weeks from the next date fixed.

With the above observations, CO 2796 of 2025 stands allowed.

(Hiranmay Bhattacharyya, J.)