

Item No. 13

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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2942 of 2024
With
IA NO: CAN 1 of 2025

Sayhaz Begum & Ors.
Vs
Musst. Abeda Khatoon

Mr. Kushul Chatterjee, (VC)
Mr. Oishik Chatterjee.

... for the petitioners.

Mr. Iftekar Munshi,
Mr. Gour Baran Sau. ... for the opposite party No1.

Affidavit of service filed by the petitioners be kept
with the record.

Though this matter is appearing under the
heading "Extension of Interim Order" but with the
consent of the learned advocate for the respective
parties the main revisional application is taken up for
hearing by treating the same as on the days list.

This application under Article 227 of the
Constitution of India is at the instance of the
defendants and is directed against Orders dated
August 16, 2023, September 8, 2023 and February 6,
2024 all passed by the Learned Civil Judge (Senior
Division), 2nd Court, Alipore, South 24 Parganas in
Title Suit No. 540 of 2023.

By the order dated 16th August, 2023, the

amendment application was disposed of. By the order dated 8th September, 2023, the application filed by the petitioner praying for vacating the order of *ex parte* hearing was allowed subject to payment of cost of Rs.2000/-. The petitioner did not comply with the direction contained in the order dated 8th September, 2023 and also that petitioner was absent without taking any steps, learned Trial Judge proceeded with the recording of evidence of PW-1 *ex parte*.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that for reason beyond the control of the petitioners, the defendants/petitioners herein could not take necessary steps in the said suit. He further submits that erstwhile learned advocate of the petitioner paid the amount of Rs. 2000/- but due to unfortunate death of the erstwhile learned advocate for the petitioner, the petitioner could not collect the relevant receipt showing payment of the said cost.

Mr. Chatterjee further submits that the petitioner may be allowed to contest the said suit by vacating the *ex parte* order subject to any terms that may be fixed by this Court.

Learned advocate for the opposite party vehemently opposes the prayer of Mr. Chatterjee. He submits that the petitioners are trying to delay the hearing of the suit. Though the prayer of the petitioners for vacating the order of *ex parte* hearing

was allowed subject to payment of cost but the cost of Rs.2000/- was also not paid by the petitioner. He submits that Learned Trial Judge was right in proceeding with recording evidence of the PW-1 *ex parte*.

Having heard the learned advocates for the parties and perused the materials placed.

Without entering into the dispute as to whether the erstwhile learned advocate for the petitioner paid the cost of Rs.2000/-, the fact remains that no document in support thereof could be produced by the petitioner either before the Learned Trial Judge or before this Court.

Considering the fact, the prayer of the petitioners for vacating the *ex parte* hearing was allowed subject to payment of cost and the petitioners claim to have paid the said amount to the erstwhile learned advocate, this Court is of the considered view that the petitioner should be allowed to contest the said suit from the stage, the suit was fixed for *ex parte* hearing subject to payment of cost of Rs.10,000/- by the petitioners to the opposite party within the time limit stipulated hereinafter.

By the order dated 16th August, 2023, the application for amendment of plaint was allowed *ex parte*, since the petitioner did not take steps at the relevant point to time. Thus, this court is not inclined

to interfere with such order. Mr. Chatterjee submits that he may be allowed to participate in the suit from the stage after allowing the amendment of plaint. Such submission is placed on record.

It is not in dispute that the petitioners have obtained the certified copy of the amended plaint. Mr. Chatterjee further submits that draft of the written statement is ready but some time is to be given to the petitioner to file the same as the father of the present learned advocate for the petitioner before the Learned Trial Judge has passed away in the meantime.

In view of the aforesaid discussion, CO No.2942 of 2024 stands disposed of by passing the following directions.

The orders impugned dated September 8, 2023 and February 6, 2024 in so far as the suit was directed to proceed *ex parte* is set aside.

The petitioners will be permitted to participate in the said suit by filing written statement to the amended plaint on or before October 29, 2025, subject to payment of cost of Rs.10,000/- to the opposite party on or before the filing of the written statement before the Learned Trial Judge.

If the cost as directed hereinbefore is paid within the time limit indicated hereinbefore, the Learned Trial Judge shall accept the written statement of the petitioners and shall allow the petitioners to

participate in the suit starting from the stage of cross-examination of the PW-1. The Learned Trial Judge shall proceed with the suit thereafter in accordance with law.

It is, however, made clear that in the event the cost is not paid within the time limit as indicated hereinbefore or the written statement is not filed within the time limit indicated hereinbefore, this order shall automatically stand recalled and the civil revisional application shall stand dismissed and Learned Trial Judge shall be free to proceed with the hearing of the suit *ex parte*.

Connected application stands disposed of accordingly.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual undertakings.

(Hiranmay Bhattacharyya, J.)