

21.05.2025

Sl no. 171

Ct no. 29

P.M.

C.O. 3853 OF 2024

Arnab Roy

- Vs -

Arpita Khan nee Roy & Anr..

Mr. Manas Kumar Barman,

Mr. Abhiraj Tarafdar,

Mr. Shahzeb Farooqui

.... for the petitioner.

Mr. Surajit Nath Mitra, Sr. adv

Mr. Sarbajit Mukherjee,

Mr. Kallol Mondal

... for the opposite party

Being aggrieved and dissatisfied with the impugned order dated 5th September, 2024 and 20th July, 2023 passed in Title Suit No. 114 of 2022 present application has been preferred by the petitioner/defendant.

It is submitted that initially the father of the defendant/petitioner filed eviction suit against the petitioner/defendant/son for evicting him from the suit premises describing him as a licensee. Thereafter during the pendency of the suit, the father died and his two daughters preferred an application under Order 22 Rule 10 CPC, for permitting them in place of the deceased plaintiff, to continue with the suit.

It further appears that the said application on the ground of devolution of interest upon them by

way of transfer made by their father was filed on 15.03.2023 and thereafter defendant/petitioner herein prayed for adjournment to file written objection on 26.04.2023, for which the matter was adjourned to 13th June, 2023 for hearing of the said application. On that date the defendant again filed an adjournment application for filing written objection (copy of which is annexed with the application) wherein he stated that due to some specific reason he could not prepare the written objection in time. However, the Court below by the impugned order dated 13.06.2023 recorded as follows : -

13.06.2023 –

“Today is fixed for hearing of application under Order 22 Rule 10 CPC . Both side files hazira. Defendant files an adjourn petition. Heard from both sides. Application under Order 22 Rule 10 CPC dated 15.03.2023 filed by proposed plaintiff is allowed. Adjourn petition of defendant is allowed. To 20.07.2023 for revised plaint. Written statement by defendant.”

Being aggrieved by the said order learned counsel appearing on behalf of the petitioner submits that without assigning any reason, the application under Order 22 Rule 10 CPC was allowed, which is prejudicial to his interest. Furthermore, the Court below on one hand had allowed the said application

filed by opposite party, simultaneously allowed defendant's/petitioner's application for adjournment to file written objection.

He further submits that he filed a recall application thereafter on 20th July, 2023 which also has been turned down by another impugned order dated 05.09.2024. Accordingly he prayed for setting aside both the impugned orders and to give him a chance to contest the application under Order 22 rule 10 CPC by filing written objection.

Learned counsel appearing on behalf of the opposite party submits that the defendant took about 10 months time for preparing written objection against the said application but since no objection was filed the Court below was justified in allowing the application under Order 22 Rule 10 CPC and the order impugned in allowing Order 22 Rule 10 CPC in favour of the proposed plaintiff is natural in view of devolution of interest in their favour and does not require meritorious hearing, and he further submits that the defendant/petitioner has preferred the present application only to drag the suit which has been initiated to evict the defendant/petitioner from the suit premises.

I have considered the submission made by both the parties.

The above quoted order clearly states that the order impugned dated 13.06.2023 by which the prayer made by the opposite party herein under Order 22 Rule 10 CPC is allowed, unfortunately not supported by reason.

It further appears that the impugned order has been passed mechanically without application of mind far from judicial mind. The dichotomy in the order arises as the court below was very casual while coming to a conclusion. In allowing or rejecting a prayer of the parties, it must be supported by reason, otherwise it would cause prejudice to the other party who will have no scope to know the thought process of the Court.

Having considered the facts and circumstances of this case, the orders impugned dated 13.06.2023 and 05.09.2024 are hereby set aside. The defendant/petitioner herein is hereby given liberty to file written objection, if any, against the opposite party's application under Order 22 Rule 10 CPC positively within a period of 30 days from the date of communication of this order and the Court below will dispose the petitioner's application under Order 22

rule 10 CPC afresh supported by reason within a period of thirty days thereafter, irrespective of the fact whether the defendant/petitioner filed any written objection or not.

The Court below is further directed to expedite the final hearing of the suit and to make his best endeavour to conclude the entire proceeding preferably within a period of six months from the date of communication of this order.

Accordingly, C.O. 3853 of 2024 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all usual requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)