

11.04.2025

Sl no. 90

Ct no. 29

P.M.

C.O. 3863 OF 2024

Debi Kamal Trust Estate & ors.

- Vs -

Paridhi Merchandise Private Limited & Ors.

Mr. Dipayan Kundu

.... for the petitioners.

Affidavit of service filed by the petitioners is taken on record.

Opposite party is not represented.

This application pertains to an order dated 30th August, 2024, by which the Court below imposed cost of Rs. 1,000/- upon the plaintiff while accepting the cause shown by them, for their physical non-appearance.

Learned counsel appearing on behalf of the petitioners submits that though the petitioners herein as plaintiffs filed hazira before the Court on 24.01.2024 but the Court below directed the plaintiff to show-cause as to why their petition under section 151 of the Code of Civil Procedure should not be rejected.

The petitioner herein submits that they have shown cause on 30.08.2024 but the Court below unnecessarily imposed cost for acceptance of the same on the ground that the plaintiff was not

personally present in court on 24.01.2024, though the order dated 24.01.2024 records that the plaintiff was represented by filing hazira.

According to the Provision of Rule 1 of Order IX of the Code of Civil Procedure, the parties in the suit must make their presence before the Court either Personal Appearance or by means of their legal representative, unless Court directs their physical appearance on a particular day for specific reason. If in spite of specific direction, the party does not appear in person, then the consequence of Rule 12 of Order IX shall follow. In the instant proceeding no such situation arose.

Having considered the facts and circumstances of this case, I find that the Court below has not assigned reason as to why the plaintiff was required to be present physically before the Court on 24.01.2024 and without assigning any reason for his personal appearance he has imposed cost upon the plaintiff and as such order impugned is not sustainable in the eye of law.

In such view of the matter C.O. 3863 of 2024 is hereby disposed of by exempting the plaintiff from payment of cost of Rs. 1,000/- and the Trial Court is directed to accept the cause shown by the plaintiff

and to proceed with the suit and connected application in accordance with law as expeditiously as possible.

(Dr. Ajoy Kumar Mukherjee, J.)