

Ct. No. 29
25.08
2025

C.O. 3947 of 2024

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**Samir Maitra & Anr.
Vs.
Karun Kothari & Anr.**

Mr. Sundar Gopal Bhattacharya ...For the Petitioners.

Mr. Sreyash Basu Dasgupta ...For the Opposite Parties

Being aggrieved by and dis-satisfied with the judgment and order dated 30th September, 2017 passed in Mis. Appeal 385 of 2013, present application has been preferred by the plaintiffs/respondents/petitioners.

Petitioners' contention is that petitioners as the plaintiffs filed Title Suit, being No. 3781 of 2019 against the defendant/opposite parties herein for eviction from suit property by sending a notice under Section 106 of the Transfer of property Act and the suit was valued at Rs. 3,61,400/-. That suit was ultimately decreed ex parte vide order dated 1.4.2010. Thereafter, the decree was put into execution.

However, the opposite party/defendant filed one application under Order IX Rule 13 of the Code of Civil Procedure contending that sufficient cause was prevented them from appearing before the Court, when the suit was called on for hearing. Learned Trial court did not accept the defendant's prayer for setting aside the ex parte order filed under Order IX Rule 13 of the CPC, vide order dated 17.7.2013 and thereby the Misc. case 524 of 2011 under

Order IX, Rule 13 was rejected on contest by the Trial court.

Being aggrieved by that rejection order, the defendant/opposite party herein filed aforesaid Misc. appeal being no. 385 of 2013. The court below by the impugned order dated 30th September, 2019 allowed the said Misc. appeal ex parte and thereby vacated the ex parte decree passed in favour of the respondent/petitioners herein.

Being aggrieved by the said order, Mr. Bhattacharjee, learned counsel for the petitioners submits that the suit was valued at Rs. 3,61,400/- and any order passed in connection with said suit can only be challenged before this Hon'ble High Court and not before the Court below. Accordingly, the order passed by the court below behind their back is not sustainable in the eye of law. He further submits that he did not get any opportunity to agitate this point of court's jurisdiction and also other points regarding maintainability and merit of the Misc. Appeal as no notice was served upon them and they did not get any opportunity to ventilate their grievance. In this context, they referred Section 21(A) of the Bengal Agra Assam Civil courts Act, 1887. Mr. Bhattacharjee, in this context also relied upon a decision in the case of *The Controller of Stores and another Vs. M/s. Kapoor Textile Agencies* reported in AIR 1975 Punjab and Haryana 321.

Mr. Dasgupta, learned counsel for the opposite party raised objection contending that before the trial court they did not get any opportunity to raise the issue regarding over valuation of the suit as the suit was decreed ex parte before filing of written statement by them. He further referred Section 11 of the Suit Valuation Act, 1887 regarding procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

Having considered the fact and circumstances of the case, I find that the court below ought to have decided the maintainability of the Misc. Appeal as preliminary issue before passing any final order. Since it is the case of the petitioners/respondent/plaintiff that they did not get opportunity to ventilate the grievance before the court below, the present revisional application being C.O 3947 of 2024 is hereby disposed of with a direction upon the court below to hear and decide the maintainability of Misc. Appeal no. 385 of 2013 as preliminary issue after giving opportunity to both the parties to contest and if he finds such Misc. Appeal is maintainable, only then he will dispose of the said appeal on merit. On other issues and the entire exercise shall be concluded preferably within a period of two months from the date of the order.

In such view of the matter, the impugned judgment and order dated 30th September, 2019 passed in Misc. appeal no. 385 of 2013 is hereby set aside.

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

(Dr. Ajoy Kumar Mukherjee, J.)