

10.02.2025
Item No.130
BR

CO 3961 of 2024
With
IA No. CAN 1 of 2025

Subhash Sarkar
-vs-
Bikash Sarkar

Mr. Dipta Bhanu Dutt,
Mr. Debasish Das
... for the petitioners

Affidavit of service filed shows that service could not be effected upon the respondent due to insufficient address. It appears that the address available has been noted by the petitioner in the service. As such, let it be kept with the record.

The present civil revision has been preferred against an order dated 24.09.2024 passed by learned 3rd Additional District Judge at Barrackpore in connection with O.S. No. 01 of 2015 arising out of Mis. Case No. 210 of 2013(P).

By the said order under revision the learned trial Court rejected the O.P. No.2 (B)/petitioner herein's application under Order 7 Rule 11 of the Civil Procedure Code.

Being aggrieved the present civil revision has been preferred.

On perusal of the order under revision it appears that the Court held as follows :

“ Vide Order dated 26.06.2024 this Court had come to opinion that Narayan Sarkar was tried to be served with the summons which could not be done as his door was locked and the learned Advocate of the petitioner produces the Bank Pass Book of Narayan Sarkar showing his residence at Jalpaiguri and I find no anomaly in this regard and the contention that Narayan Sarkar is a resident of Bangladesh is not supported by any cogent document and hence the prayer under Order 7 Rule 11 CPC has got no legs to stand and in my view is a tactic to delay the matter and the prayer under Order 7 Rule 11 CPC is dismissed with cost of Rs. 20,000/-.

No steps having been taken towards the evidence from the side of the Ops and the evidence of the petitioner being closed, I am of the view that a short date should be given to the Ops to adduce evidence.

To 14.11.2024 for evidence from the side of the Ops i.d. argument.”

Learned counsel for the petitioner has also submitted by relying upon a document which is an information received annexed at page 34 of the revisional application that

summons has not been served upon some of the opposite parties. But in spite of that the Court had proceeded with the trial. The Court was prima facie satisfied with the copy of the passbook filed on behalf of the Narayan Sarkar showing that he is a resident of Jalpaiguri.

Learned counsel for the petitioner herein has placed a copy of the document being National Identification Card of Narayan Sarkar annexed at page 33 of the revisional application which shows that the Identification Card has been issued in favour of Narayan Sarkar by the Government of Peoples Republic of Bangladesh.

Considering the said document which is dated 4.9.2008, the civil revision is disposed of with the direction that the trial Court shall direct the verification of the said document by the District Enforcement Branch and on receiving such report will consider the application under Order 7 Rule 11 of CPC **afresh**.

Consequently the order under challenge dated 24.09.2024 in O.S. No. 01 of 2025 arising out of Mis. Case No. 210 of 2013(P) is hereby set aside.

The application under order 7 Rule 11 CPC is restored to its own file.

The learned trial Court is directed to dispose of the application under Order 7 Rule 11 of the CPC within a period of 60 days from the date of this order.

Till disposal of the application under Order 7 Rule 11 of the CPC, the trial shall be stayed .

Civil revision is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the learned counsel for the parties on usual undertakings.

Let a copy of this order be sent to the learned trial Court.

(Shampa Dutt (Paul), J.)