

30.01.2026
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CO 933 OF 2022

**Smt. Priyanka Banerjee & Ors.
Vs.
Sri Shib Shankar Das & Anr.**

Mr. Pijush Chaturvedi, Sr. Adv.
Mr. Anujit Mookeherji
Mr. Vinaayak Chaturvedi
.....for the Petitioners/plaintiffs

Mr. Saibal Basu
Mr. Amitava Bhowmik
....for the Opposite Parties/Defendants

1. The revision has been preferred challenging an order dated 31st March, 2022 passed by the learned 4th Civil Judge (Senior Division) at Alipore in Title Suit No. 1212 of 2018.
2. Vide the order under challenge the trial Court passed the following order:-

“.....Therefore, in view of the latest views of the Hon'ble Apex Court the Court has the power to extend the time limit to file written statement if the Court has reason to believe that the defendants were prevented to file written statement within the period mentioned under the provision of under Order VIII Rule 1 of Code of Civil Procedure. In the context of present case defendants already filed written statement on 03.02.2022 along with counter claim having huge delay intervened by the pandemic situation.

Therefore, in view of the discussions made above and relying upon the latest decision of the Hon'ble Apex Court in Civil Appeal No. 433 of 2020 dated 20.01.2020, I am inclined to accept the written statement

filed by the defendants after rejecting the contentions of the plaintiffs.

ORDERED

that the cause shown under the application dated 03.02.2022 is hereby accepted being found satisfactory and sufficient.

That the prayer for recall of the order dated 04.12.2019 under the application raised by the defendants dated 03.02.2022 is hereby allowed on contest but with costs of Rs.5,000/-.

Let the order for exparte hearing dated 04.12.2019 is hereby recalled subject to payment of aforesaid costs by the defendants to the plaintiffs.

The written statement along with the counter claim is to be accepted after payment of costs.

Sheristadar is directed to assess the Court fee over the counter claim filed by the defendants.

To 28.04.2022 for payment of costs and acceptance of written statement.

Dictated and Corrected by me,

***Sd/-
Civil Judge (Sr. Divn.)
4th Court, Alipore.”***

- 3.** The Court relying upon a judgment of the Apex Court, extended the time limit to file written statement and accepted the written statement filed by the defendants/opposite parties herein.
- 4.** Both parties have filed their respective written notes along with judgments relied upon.
- 5. The plaintiff/petitioner's case is that:-**

“i. By an order dated 4th December 2019, the Learned trial Court upon appreciating the documents on record including the postal receipts evidencing service of the plaint upon the Opposite Parties and upon considering the dilatory tactics

employed by the Opposite Parties, passed an order rejecting the prayer of the Opposite Parties to file Written Statement and directed for ex parte hearing of the suit.

- ii. The Opposite Parties on 14th February, 2020 preferred two applications under Section 151 of the Code of Civil Procedure, 1908, [1] firstly for recalling of the order dated 4th December, 2019 [2] secondly for allowing the Opposite Parties to file their Written Statement.*
 - iii. Finally, the abovementioned applications were considered by the learned trial Court and by an order dated 4th January, 2022, the said applications were rejected. Thus, the prayer of the Opposite Parties to file their Written Statement stood refused by the learned trial Court twice.*
 - iv. On 3rd February, 2022, the Opposite Parties preferred two separate petitions in the nature of Show-Cause Petition and Petition for Vacating the Ex Parte order dated 4th February, 2019 and for accepting the written statement with Counter Claim.*
 - v. The Learned trial Court by the impugned order dated 31.03.2022 without considering it's own order dated 4th January, 2022 has allowed the above mentioned petitions dated 3rd February, 2022 thereby recalling the ex parte order dated 4th December, 2019 and allowing the Opposite Parties to file their Written Statement along with Counter Claim.”*
- 6.** The following judgments are relied upon by the petitioners:-

- i) *Satyadhyan Ghosal & Ors. v. Deorajin Debi (Smt) & Anr., AIR 1960 SC 941, (Para 8).***

“8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean

that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?”

ii) *Ishwar Dutt v. Land Acquisition Collector & Anr.*, (2005) 7 SCC 190, (Para 14).

“Findings

14. *It is not in dispute that the High Court issued a writ of mandamus. It is also not in dispute that the direction of the High Court was acted upon. The principle of res judicata, as is well known, would apply in different proceedings arising out of the same cause of action but would also apply in different stages of the same proceedings. As the judgment and order passed in CWP No. 510 of 1985 [CWP No. 510 of 1985 dated 9-9-1985] attained finality, we are of the opinion that the respondents herein could not have raised any contention contrary thereto or inconsistent therewith in any subsequent proceedings. In fact the Land Acquisition Officer while passing the award on 31-1-1991 took into consideration the said direction and awarded 12% additional compensation at the market value. The said order of the Land Acquisition Officer never came to be questioned and, thus, attained finality.”*

iii) *Sulthan Said Ibrahim Vs Prakasan & Ors.*, in Civil Appeal No. 7108 Of 2025 (@Special Leave Petition (C) No. 4307 Of 2022), decided on May 23rd, 2025, (Para 53 to 56).

“53. *The High Court, in its impugned order, held the application of the appellant under Order I Rule 10 to be*

barred by res judicata and thus not maintainable on that ground. We find no infirmity in the said observation made by the High Court. This Court in **Bhanu Kumar Jain v. Archana Kumar** reported in (2005) 1 SCC 787 observed that the principles of res judicata apply not only to two different proceedings but also to different stages of the same proceeding as well. The relevant observations are reproduced hereinbelow:

“18. It is now well settled that principles of res judicata apply in different stages of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi [AIR 1960 SC 941 : (1960) 3 SCR 590] and Prahlad Singh v. Col. Sukhdev Singh [(1987) 1 SCC 727].)

19. In Y.B. Patil [(1976) 4 SCC 66] it was held: (SCC p. 68, para 4)

“4. ... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.”

xxx xxx xxx

21. Yet again in Hope Plantations Ltd. [(1999) 5 SCC 590] this Court laid down the law in the following terms: (SCC p. 604, para 17)

“17. ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.”

(Emphasis supplied)

54. Thus, as the dictum of the law as extracted aforesaid indicates, the only manner in which a decision arrived at by a court of competent jurisdiction can be

interfered with is by modification or reversal by the appellate authorities. In the present case, the order for impleadment of the appellant as a legal heir was made by the Trial Court after due inquiry under Order XXII, as also observed by the Trial Court in its order rejecting the application under Order I Rule 10. Evidently, neither any objection was raised by the appellant before the Trial Court nor any revision was preferred subsequently against the said order. Thus, it could be said that the issue as regards the impleadment of the appellant as a legal heir of the original defendant had attained finality between the parties and thus the subsequent application under Order I Rule 10 seeking to get his name deleted from the array of parties could be said to be barred by res judicata. Undoubtedly, the expression “at any stage of the proceedings” used in Order I Rule 10 allows the court to exercise its power at any stage, however the same cannot be construed to mean that the defendant can keep reagitating the same objection at different stages of the same proceeding, when the issue has been determined conclusively at a previous stage. Allowing the same would run contrary to the considerations of fair play and justice and would amount to keeping the parties in a state of limbo as regards the adjudication of the disputes.

55. This Court in the case of **Satyadhyan Ghosal v. Deorajin Debi** reported in **[1960] 3 SCR 590**, has noted that the principle of res judicata is essential in giving a finality to judicial decisions. The relevant observations are reproduced hereinbelow:

“The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or

proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. ...

(Emphasis supplied)

56. This Court in **S. Ramachandra Rao v. S. Nagabhushana Rao** reported in **2022 SCC OnLine SC 1460** observed that although a decision may be erroneous, yet it would bind the parties to the same litigation and concerning the same issue, if it is rendered by a court of competent jurisdiction. The observations read thus:

“31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover,

a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

7. The opposite parties case herein is that:-

- a) On 04.12.2019, the Petitioners/Plaintiffs mislead the Learned Trial Court by falsely submitting that they have served the documents upon the Opposite Parties/Defendants when in fact it is recorded in Paragraph 2 of the order that "*...the postal envelope returned to the Ld. Advocate*" (Emphasis applied). The Learned Trial Court fixed 17.01.2020, for ex-parte hearing of the suit without having struck-off the defence of the Opposite Parties/Defendants.
- b) On 17.01.2020, the date fixed for "ex-parte hearing", the Petitioner No. 2/Plaintiff No. 3, being the sole witness was examined in full and the next date was fixed for "argument."
- c) On 20.01.2020, the Opposite Parties/Defendants filed an application under Section 151, CPC praying for "*... to allow the Defendants to file their Written Statements ...in order to enable the Defendants to contest the suit...*"

d) On 14.02.2020, the Opposite Parties/Defendants filed another application under Section 151, CPC praying for recalling of the order dated 04.12.2019.

e) On 04.01.2022, the Learned Trial Court has been pleased to reject the application dated 14.02.2020 under Section 151, CPC but the **application dated 20.01.2020 has never been adjudicated.**

f) On 03.02.2022 the Opposite Parties/Defendants filed 2 petitions along with their Written Statement and Counter-Claim.

Prayer in the Show Cause Petition was:-

(1) *"... allow your petitioners to contest the suit..*

Prayer in the Petition for vacating the Ex-Parte Order:

(2) *"...accept the Written Statement with Counter Claim...and allow your petitioners to contest the suit by vacating the ex-parte order..."*

g) Impugned Order dated 31.03.2022 grants, inter alia, the following reliefs to the Opposite Parties/Defendants:

(1) The order for exparte hearing dated 04.12.2019 is recalled subject to payment of Rs.5,000/- as costs by the Defendants to the Plaintiffs.

(2) The Written Statement along with Counter Claim is to be accepted after payment of costs.

8. The grounds to counter the case of the plaintiff/petitioner is that none of the judgments relied upon by the petitioner is applicable to the present case.
9. The argument in respect of the impugned order being barred by “resjudicata” is that:-

As the prayer of the opposite parties/defendants towards having their written statement accepted has never been adjudicated on merit prior to the impugned order dated 31.03.2022 and their defence has never been struck off, the principle of res judicata does not apply in this case.

10. The petitioner has mainly stressed on the ground of res judicata.
11. To decide the said issue, the following orders of the trial Court are relevant:-

i. **Order dated 04.12.2019**

“.....Defendant nos. 1 and 2 filed two petitions praying for time to file WIS and W/O on the ground that the documents annexed with the plaint and the copy of the plaint were not served upon them.

Having heard the respective submissions of both the Ld. Advocates for the parties and on perusal of the Postal Track Report and copy of letter of Ld. Advocate for the plaintiff it appears that the defendants knowing everything refrained themselves to contest the suit by filing W/S. Moreover, from the Postal Receipt and the Track Report it is

palpably clear that the documents along with the copy of the plaint which were sent to the defendants have been received by them. Therefore, the prayer as set forth by defendant nos. 1 and 2 under two petitions are hereby rejected.

Let the suit be fixed for ex parte hearing.

To 17.01.2020 for ex parte hearing of the suit.

D/C by me,

**Sd/-
Civil Judge (Sr. Divn.)
4th Court, Alipore.”**

ii. Order dated 31.03.2022

“....The defendants by filing the application dated 03.02.2022 prayed for vacating the order of ex parte hearing of his against them.

.....

Vide order dated 04.12.2019 this Court rejected the applications of the defendants fixing the suit for exparte hearing. It is further contention of the plaintiffs that against the said order the defendants did not prefer any application before higher forum and as such order dated 04.12.2019 reached to its finality and there is no scope to file the same having binding effect upon the parties to the suit and being frustrated with the rejection of both the applications filed on behalf of the defendants they filed an application for recalling the order passed on 04.12.2019 and the said application earlier rejected by this Court vide order dated 04.01.2022 and therefore the defendants are estopped to raise the allegations made out in the present application. Therefore, the plaintiffs prayed for rejection of the application in limine.

.....

Therefore, in view of the latest views of the Hon'ble Apex Court the Court has the power to extend the time limit to file written statement if the Court has reason to believe that the defendants were prevented to file written statement within the period mentioned under the provision of Order VIII Rule 1 of Code of Civil Procedure. In the context of present case defendants already filed written statement on 03.02.2022 along with counter claim having huge delay intervened by the pandemic situation.

*Therefore, in view of the discussions made above and relying upon the latest decision of the Hon'ble Apex Court in Civil Appeal No. 433 of 2020 dated 20.01.2020, **I am inclined to accept the written statement filed by the defendants after rejecting the contentions of the plaintiffs.***"

- 12.** From the said orders dated 04.12.2019 and 31.03.2022, it appears that the order dated 31.03.2022 is prima facie barred by res judicata in view of the fact that the issue in both the orders is in respect of the defendants prayer to file W/S and W/O and contest the suit.
- 13.** Vide the order dated 04.12.2019, the trial Court was pleased to reject the said prayer and fix the suit for exparte hearing.
- 14.** Similarly, the defendant/opposite party's second prayer to file written statement has been accepted by the Court on relying upon a judgment of the Apex Court on vacating the order for ex parte hearing.

- 15.** As such the prayer for filing written statement being rejected vide order dated 04.12.2019, could not have been reconsidered by the trial Court on permitting the opposite parties to file the written statement vide order dated 31.03.2022.
- 16.** The prayer on 04.12.2019 was considered /rejected on merit and the same issue was again considered on merit on 31.03.2022 and allowed.
- 17.** The difference being that, on the defendant (opposite parties) not challenging the order dated 04.12.2019, the plaintiff/petitioner herein accrued a valuable right, which vide order dated 31.03.2022 was taken away, thus depriving the petitioner of his lawful right.
- 18.** Thus, the suit being a suit for declaration, eviction, and recovery of khas possession, the defendant herein shall avail of the opportunity as provided under the act, but not filing of written statement, as permitted by the impugned order.
- 19.** As such, the order under challenge dated 31.03.2022 passed by the learned 4th Civil Judge (Senior Division) at Alipore in Title Suit No. 1212 of 2018, being barred by the principle of res judicata is set aside.
- 20.** The trial Court shall proceed with the suit expeditiously, permitting the defendant/opposite party to participate as per the provisions of the act.
- 21.** All connected application, if any, stands disposed of.

- 22.** Interim order, if any, stands vacated.
- 23.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)