Sl.16
12.11.2026
Court No.6
BP

C.O. 3870 of 2026

Hazin Safura Khatoon & Ors.
-versus-
Hamida Bibi & Ors.

Ms. Shohini Chakraborty
Mr. Arijit Sarkar
..for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against judgement and order dated January 20, 2026 passed by the learned Additional District Judge, 5th Court at Barasat, 24 Parganas (North) in Miscellaneous Appeal No. 49 of 2018.

The suit being Title Suit No. 152 of 1992 filed by the opposite parties praying for declaration and injunction stood decreed ex parte by a judgement and decree dated 29th January, 1996. The petitioners filed an application under Order 9 Rule 13 of the Code of Civil Procedure being Misc. Case No. 69 of 1997 praying for setting aside the ex parte decree along with an application under Section 5 of the Limitation Act. The Miscellaneous Case No. 69 of 1997 along with the application under Section 5 of the Limitation Act stood dismissed on contest by an order being no. 146 dated 30th April, 2018. Being aggrieved by such order the petitioners preferred a Miscellaneous Appeal being No. 49 of 2018 and the learned judge of the appellate court, by the impugned

judgement and order dated 20th January, 2026 dismissed the said miscellaneous appeal.

Ms. Chakraborty, learned advocate appearing for the petitioners submits that the petitioners were out of the country at the relevant point of time for which the petitioners were prevented by sufficient cause from defending the suit instituted by the opposite parties. She further submits that immediately upon being aware that an ex parte decree has been passed against the petitioners, the miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure was filed. She further submits that even the summons of the said suit was not served upon the petitioners and for which the ex parte decree is liable to be set aside.

The learned trial judge while deciding the Miscellaneous Case No. 69 of 1997 framed two issues for determination and the first of such issue was whether the summons sent to the defendant in Title Suit No.152 of 1992 was properly served or not and whether sufficient cause was shown by the defendant for not remaining present on the date when the suit was taken up for hearing and passing the decree.

After going through the application under Order 9 Rule 13 of the Code of Civil Procedure which was registered in the miscellaneous case this Court finds that two fold grounds were taken by the petitioners for not taking steps to contest the title suit. One of such ground

was that the summons of the said suit was not served upon the defendants/petitioners herein.

After going through the order passed by the learned trial judge this Court finds that the learned trial judge took into consideration the case record and recorded a factual finding that the requisites were filed on 3rd June, 1992 by the plaintiff/opposite party for sending summons upon the defendant in both ways i.e. through process of the court and by registered post with acknowledgement due. The learned trial judge noted that the acknowledgement due card returned back to the court wherefrom it appeared that the defendant received the summons by putting his signature thereupon in English vernacular. The learned trial judge also took note of the report of the service of summons dated 14th July, 1992 and recorded a factual finding that the process server reported that on 6th July, 1992 at about 11 a.m. the process server went to the address as mentioned in the summons but as he found the petitioner/defendant absent so he affixed one copy of the summons on the outer main door of the house of the defendant. The said report also states that as the witnesses present therein refused to sign the names of the two witnesses present at that particular point of time was stated therein. The learned trial judge considered the provisions of Order 5 Rule 17 of the Code of Civil Procedure, took note of the evidences adduced by the petitioners in the miscellaneous

case and drew an adverse inference against the petitioners with regard to the stand of the defendant that he cannot sign in English and found such stand to be a false one.

The learned trial judge after considering the evidence of PW-1 recorded that no document was produced to show that his father was out of India for a period of one and half years when the summons was sent to him. The learned trial judge on the basis of the materials available on record disbelieved the stand taken by the defendants that the defendants/petitioners herein were out of India at the relevant point of time.

The learned Judge of the Appellate Court after considering the findings recorded by the learned trial judge assigned cogent reasons for affirming the finding of the learned trial judge.

The learned Judge of the Appellate Court performed its duty as an appellate court while affirming the order passed by the learned trial judge.

Ms. Chakraborty, learned advocate appearing for the petitioners would strenuously contend that the provisions of Order 5 Rule 19 of the Code of Civil Procedure has not been followed in the case on hand.

At this stage it would be relevant to note the provisions of Order 5 Rule 19 of the Code of Civil Procedure as well as the Calcutta High Court Amendment wherefrom it appears that if the summons returned under the rule has not been verified by the declaration of the

serving officer its a mandatory duty upon the court to examine the serving officer.

It is not the case of the petitioners herein that the report of the process server was not verified by the declaration as is required under the provisions of Order 5 Rule 19 of the Code of Civil Procedure.

For such reason, this Court is not inclined to accept the submission of Ms. Chakraborty, learned advocate appearing for the petitioners that the impugned orders suffer from infirmity warranting interference under Article 227 of the Constitution of India. It is now well settled that the scope of interference under Article 227 of the Constitution of India is limited and interference is called for if the orders under challenge suffer from any perversity.

The learned judge of the trial court as well as the appellate court arrived at a factual finding that the petitioners failed to prove the grounds for setting aside the ex parte decree. The impugned orders do not suffer from any perversity.

For such reason, this Court is not inclined to interfere with the impugned orders.

With the aforesaid observations, C.O. 3870 of 2026 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)