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01.12.2023
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 3383 of 2023

Sri Mahendra Shaw @ Mahendra Sah
-versus-
Sri Binode Behari Das

Mr. Mahendra Prasad Gupta,
Mr. Syed Julfikar Ali,
... for the petitioner/defendant.

Mr. Shubham Gupta,
Mr. Anirban Ghosh,
Mr. Nadeem Khan,
Ms. Debjani Kundu ... for the opposite party/plaintiff.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment and is directed against the order dated August 16, 2023 passed by the learned Civil Judge (Junior Division) at Bidhan Nagar, District: 24 Parganas (North) in the said suit being Ejectment Suit No. 65 of 2012.

The defendant defaulted in appearance on December 20, 2022 as such the learned Trial Judge fixed March 28, 2023 as the date for ex-parte hearing of the suit but at the instance of the plaintiff, the said date was shifted forward to February 14, 2023 vide order dated January 11, 2023. The defendant was not aware of such change of date in the suit, he appeared before the learned Trial Judge on the said fixed date i.e. March 28, 2023 and filed an application for recalling of the order fixing the suit for ex-parte hearing.

The learned Trial Judge, taking the earlier conduct of the defendant into consideration has dismissed the said application by the order impugned.

The defendant, under Order IX Rule 7 of the Code is obliged to assign good cause for his previous non-appearance on the date fixed for ex-parte hearing of the suit, his past conduct has no relevance in this regard, particularly when the dates of the suit were changed beyond the knowledge of the defendant.

The order impugned therefore suffers from material irregularity and is accordingly set aside.

The disposal of the connected ejectment suit needs to be expedited as it is pending since 2012, to facilitate it, inspection of the suit property is to be completed expeditiously, the fees of the Advocate Commissioner appointed for the said purpose is yet to be deposited. The plaintiff alone shall deposit the said fees within seven days from date. The learned Trial Judge is requested to ensure that the commission work is completed within a period of four weeks from the date of deposit of such costs.

To avoid unnecessary delay in witness action, parties were directed to disclose the particulars of their respective witnesses. The plaintiff says that he would cite the following three witnesses in the suit:-

1. Sri Binode Behari Das [the plaintiff];
2. Sri Arindam Das [son of the plaintiff] and
3. Advocate Commissioner

The defendant on the other hand discloses the names of the following persons to be cited as witnesses in the suit on his behalf:-

1. Sri Mahendra Shaw @ Mahendra Sah (the Tenant)

2. Sri Chotelal Gupta (alleged sub-tenant)
3. Sri Ashoke Shaw @ Ashoke Sah [brother of the tenant).

It is made clear that the parties are not entitled to cite any witness other than the witnesses mentioned above.

Learned counsel for the petitioner complains that the defendant has not paid the costs imposed by the Court in its earlier orders, non-payment of such costs would automatically attract the consequence of such default, the plaintiff is at liberty to bring the said defaults to the notice of the learned Trial Judge.

The learned Trial Judge is requested to make all endeavour to dispose of the suit within a period of eight months from the date of communication of this order and in doing so, shall not grant any unnecessary adjournment to either of the parties.

C.O. No. 3383 of 2023 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified photostat copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)