

(2013) 11 CAL CK 0003

Calcutta High Court

Case No: APD No. 260 of 2012 with C.S. No. 30 of 2011

Kolkata Improvement Trust

APPELLANT

Vs

Sardarmull Kankaria

RESPONDENT

Date of Decision: Nov. 19, 2013

Hon'ble Judges: Ashim Kumar Banerjee, Acting C.J.; Debangsu Basak, J

Bench: Division Bench

Advocate: P.S. Basu and Mr. Satyajit Talukdar, for the Appellant; Pramit Kr. Ray and Mr. Saunak Ghosh, for the Respondent

Final Decision: Disposed Off

Judgement

1. The appeal is directed against a decree dated September 29, 2011. The defendant did not file written statement. In absence of written statement being filed, the learned Judge took up the suit for final hearing and held that the plaintiff had a right to seek decree ex parte, however, subject to proving the case by the plaintiff. Being aggrieved the defendant has preferred the appeal. Mr. P.S. Basu, learned Counsel appearing for the appellant contended, written statement was not filed in view of the pendency of a SLP pending before the Hon"ble Supreme Court of India. The decree dated September 29, 2011 was passed whereas such SLP was disposed of on October 10, 2011.

2. Per contra, Mr. Pramit Kumar Ray, learned Counsel for the respondent contended, the appellant created third party right in respect of the property in question. He also submitted, the respondent had nothing to show that third party right had been created by the appellant in respect of the subject property. He contended, that the respondent was a person of 85 years of age and that his client being a senior citizen, should be taken into consideration. Mr. Ray drew attention of the Court to the order dated October 10, 2011 passed by the Hon"ble Supreme Court of India while rejecting the SLP directed against the judgment and order dated August 11, 2011 passed by this Hon"ble Court and submitted, the appellant ought to have taken steps to file written statement and contest the suit.

3. We have considered the rival contentions of the parties. The impugned judgment does not disclose any reason for passing the decree dated September 29, 2011. The plea that the written statement was not filed in view of the pendency of the Special Leave Petition, does not appeal to us. However, for the ends of justice and to afford the appellant an opportunity to contest the suit, we set aside the ex parte decree and permit the appellant to file written statement within a period of a fortnight from the date of this order. This direction is peremptory.

4. Keeping in view the conduct of the appellant in not filing written statement within the time stipulated earlier and in view of the fact that the appellant chose not to file written statement and also in view of the fact that the respondent is a senior citizen, we think it appropriate that the appellant must pay costs thrown away assessed at Rs. 50,000 to the respondent within a period of seven days from the date of this order.

5. The payment of cost is condition precedent of filing of the written statement. In the event any of the conditions as specified herein, namely, the payment of costs and the filing to the written statement within the period stipulated is not made by the appellant, this order would stand automatically recalled and the ex parte decree would stand revived. The appeal is disposed of accordingly.