(2013) 10 CAL CK 0005

Calcutta High Court

Case No: Co. No. 2737 of 2013

Smt. Shelly Mullick		APPELLANT
	Vs	
Shibnath Mullick and Others		RESPONDENT

Date of Decision: Oct. 7, 2013

Citation: (2013) 10 CAL CK 0005

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: B.N. Jaiswal and Mr. Tarak Nath Pal, for the Appellant; Shila Sarkar, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the defendant and is filed against the Order No. 60 dated June 28, 2013 passed by the learned Civil Judge (Senior Division), Sealdah in Title Suit No. 121 of 2005 thereby rejecting the show cause filed by the defendant/petitioner herein and fixing the date of ex parte hearing of the said suit. Now, the question is whether the impugned order should be sustained.

2. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the plaintiffs/opposite parties herein instituted the aforesaid suit against the defendant/petitioner herein for partition and other consequential reliefs in the year 2005. Summons was duly served but the defendant/petitioner herein did not contest the suit and accordingly, the said suit was decreed ex parte on August 22, 2006 in the preliminary form. Thereafter as per preliminary decree a Commissioner was appointed and while Commissioner was holding commission for partition of the suit property according to the preliminary decree, the defendant appeared and filed a misc. case under Order 9 Rule 13 of the C.P.C. for setting aside the ex parte decree.

3. The said misc. case was dismissed on contests. Being aggrieved, the defendant preferred an appeal being F.A.T. No. 147 of 2011 which was disposed of on November 29, 2011. In the meantime, the learned Commissioner submitted his report and the final decree for partition was passed in the said title suit. Accordingly, while allowing the appeal, the Hon''ble Court directed as follows:-

1) That the matter shall be heard afresh giving a chance to the defendant to file a written statement within a period of one week from date, i.e., December 6, 2011;

2) That upon hearing both the sides, the learned Trial Judge shall pass a preliminary decree within a period of two months from the date of communication of the order; and

3) That the final decree for partition should be passed within six months therefrom.

4. In spite of the time-framed order, the defendant/petitioner herein did not take prompt action. However, the hearing of the suit was fixed on August 27, 2012 with intimation to the parties that no adjournment would be given to either party. On August 27, 2012 the plaintiff filed Hazira along with suggestive issues and fresh Vakalatnama. But the defendant did not take any steps on that day. The said case was adjourned to September 19, 2012 for filing a show cause to the defendant as to why the instant suit should not be heard ex parte against him. On that day, i.e., on September 19, 2012 again the matter was adjourned directing the defendant/petitioner herein to file a show cause on November 19, 2012 and on that day as usual the defendant was also absent without any steps. He did not file any show cause.

5. Considering the situation, the learned Trial Judge fixed the next date for ex parte hearing of the suit on May 23, 2013. The defendant entered an appearance, filed a show cause along with a petition for vacating the order dated November 19, 2012. Unfortunately, on May 23, 2013 the lawyers took a resolution not to attend the Court and accordingly the matter was adjourned to June 26, 2013 for hearing the petition dated May 23, 2013 filed by the defendant. Of course, on that day both the parties were present.

6. It may be recorded herein that though the defendant filed a written statement on August 16, 2012, he did not serve a copy of the written statement to the plaintiff.

7. Having considered the above facts and situations, it is very much clear from the conduct of the defendant that he has taken a dilatory tactics to prolong the litigation and, that is why, he is taking such steps which are absolutely required at the last stage to prolong the litigation otherwise the suit would have been disposed of finally ex parte. The conduct of the defendant indicates that he has not complied with the order of the Court and, in fact, he is not interested to comply with the order of the Court, but, to prolong the litigation for the reasons best known to him.

8. However, the suit being one for partition, in consideration of the fact that the suit was filed in the year 2005 and it is to be started again if the written statement is accepted, I

think that the defendant should be allowed to contest the suit only upon payment of due compensation to the plaintiff who is proceeding with the suit since 2005. Since it is a suit for partition possibly the defendant may also be benefited by the final decree for partition and accordingly, I am of the view that the impugned order fixed for ex parte hearing should be vacated provided the defendant pays a sum of Rs. 20,000/- as costs to the plaintiff within a certain day. The defendant/petitioner herein is, therefore, directed to deposit a sum of Rs. 20,000/- in the lower court by November 16, 2013 without fail as costs in favour of the plaintiffs. If such deposit is made within the aforesaid period, the order of ex parte hearing of the suit shall stand vacated. In that case, the learned Trial Judge shall proceed with the suit in the manner as indicated earlier as per order passed by this Hon''ble Court. If no deposit is made within the aforesaid period, the matter shall be deemed as closed chapter and the learned Trial Judge shall dispose of the suit ex parte at early.

9. The application is allowed to the extent indicated above.

10. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.