

9th Pally Unnayan Samity and Another Vs Sri Tapan Banerjee @ Tapan Kumar Bandyopadhyay and Others

Court: Calcutta High Court

Date of Decision: Oct. 18, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 24

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sabyasachi Bhattacharjee and Ms. S. Bhattacharjee, for the Appellant; S.C. Polle, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

Challenge is to the Order No. 24 dated February 15, 2012 passed by the learned Civil Judge (Junior Division), 2nd

Court, Baruipore in Title Suit No. 70 of 2011 thereby rejecting an application praying for setting aside the order of ex parte hearing of the suit. The

plaintiffs/opposite parties herein instituted a suit being Title Suit No. 60 of 2009 (re-numbered as Title Suit No. 70 of 2011) for declaration,

permanent injunction and other reliefs. In that suit, the defendants entered an appearance and they took several adjournments to file a written

statement. Ultimately, they could not file any written statement. Later on, after lapse of a long time, the defendants entered an appearance again

and filed an application for setting aside the order of ex parte hearing of the suit. That application was rejected by the impugned order. Being

aggrieved, this application has been preferred.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the Learned Counsel for the parties and on going through the materials on record, I find that the defendants took several

adjournments to file a written statement and ultimately, they did not file any written statement. Nor did they take any steps on many dates. In this

way, there was a delay of 828 days in filing the application for setting aside the order of ex parte hearing of the suit. The list of dates as furnished

would depict that summons was duly served upon the defendants and they entered an appearance on July 31, 2009. It appears from the list of

dates that the defendants did not take any step on many dates, such as, December 8, 2009, December 21, 2009, January 15, 2010, February 3,

2010, April 12, 2010 and so on. Therefore, it is evident that the defendants had exhibited the conduct of non-cooperation with the intention to

drag the suit for an unending period. Under the circumstances, I am of the view that the strict rule of Order 8 Rule 1 of the C.P.C. should be

followed.

4. The defendants are required to file a written statement within 30 days from the date of summons and in any case on the grounds to be recorded

by the learned Trial Judge, the Court may grant them to file a written statement within 90 days from the date of summons. Thereafter, if the

petitioners intend to file a written statement after the lapse of statutory period, the special reasons are to be assigned and if the Court is satisfied

with the special reasons, the Court may grant permission to file the written statement.

5. In the instant case, as noted above, the defendants did not take any step for a considerable period in the said suit. The learned Trial Judge has

also recorded the ground.

6. So far as special reasons are concerned, the defendants have contended that they are not in a position to know where the written statement was

to be filed. This is nothing but a dilatory tactics in view of the fact that, it is the defendants/petitioners who filed the application u/s 24 of the C.P.C.

for transfer and upon contested hearing, learned District Judge, Alipore in Misc. Case No. 935 of 2009, directed the transfer of the suit as desired

by the defendants/petitioners. So, the defendants/petitioners are to take necessary steps to file the written statement in the appropriate Court. The

ground as assigned, therefore, cannot be supported.

7. Mr. S.C. Polle, learned Advocate appearing on behalf of the opposite parties, has referred to the decisions of Smt. Savitha Gupta v. Smt.

Nagaratha & ors. reported in AIR 2003 Karnataka 426, Sri Budhia Swain & ors. v. Gopinath Deb & ors. reported in 1999 (5) Aditya Hotels (P)

Ltd. Vs. Bombay Swadeshi Stores Ltd. and Others, Shyam Sundar Chatterjee & anr. v. Bapi Saha @ Narayan Ch. Saha reported in 2012 (2)

ICC 744, Manjur Ali & ors. v. Hasimuddin Sheikh & ors. reported in 2012 (1) CLJ (Cal) 441 and Anukul Chandra Das v. A.B.S. Builders Pvt.

Ltd. & ors. reported in 2011 (1) CLJ (Cal) 292 in support of his contention that the learned Trial Judge has rightly rejected the prayer of the

petitioners.

8. This Bench in dealing with Shyam Sundar Chatterjee & anr. (supra) and Manjur Ali & ors. (supra) discussed the decisions of Kailash Vs.

Nanhku and Others, R.N. Jadi and Brothers and Others Vs. Subhashchandra, in the concerned revisional cases.

9. Having considered the decision of the Apex Court, I am of the view that no lenient view should be taken when the defendants/ petitioners are

guilty of gross negligence. The learned Trial Judge has rightly recorded that the defendants have failed to explain the reasons why they were

prevented from filing of the written statement in compliance of Order 8 Rule 1 of the C.P.C. Rather, their intention is to drag the suit anyhow.

10. In view of the decisions referred to above, I am of the opinion that the learned Trial Judge has rightly addressed the issue. The learned Trial

Judge, in the exercise of his jurisdiction has not committed any illegality or material irregularity.

11. So, there is no scope of interference with the impugned order.

12. Accordingly, the application is dismissed.

13. 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.