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Court : Kolkata Appellate

Decided On : Dec-22-2010

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 2306 of 2005

Appellant : Sushil Kumar Nath and anr.

Respondent : Sri Tapas Mitra and ors.

Advocate for Pet/Ap. : Mr. Jiban Ratan Chatterjee,; Ms. Sulekha Mitra, Adv

Judgement :

1. Challenge is to the order no.73 dated April 18, 2005 whereby the learned Civil Judge (Junior Division), First Court, Burdwan rejected the prayer of the petitioner for accepting the written statement filed by him earlier and fixed the next date for ex parte hearing in Title Suit No.222 of 2001.

2. The defendants / opposite parties instituted a title suit being Title Suit No.69 of 1998 (subsequently renumbered as Title Suit No.222 of 2001) against the petitioners praying for a decree of declaration of their tenancy right and also for permanent injunction restraining the defendants from evicting the plaintiffs from the suit property and also from disconnecting the electric line. The suit was instituted on March 12, 1998 and the defendants appeared in the suit on April 4, 1998. But the written statement was filed by them on March 9, 2005, i.e., after about seven years from the date of appearance. Under the circumstances, the

learned Trial Judge has rejected the prayer for accepting the written statement in view of the new provisions of the C.P.C., i.e., the Act of 22 of 2002. Being aggrieved, this application has been preferred by the defendants.

3. Upon hearing the learned counsel for the petitioners and on going through the materials on record, I find that initially there was a talk for compromise and for that reason a joint petition was filed to effect compromise of the suit on April 18, 1998.

4. Ultimately, no compromise petition was filed and the opposite parties herein prayed for withdrawal of the documents filed by them. That prayer was granted. Then, one commissioner was appointed for holding inspection and the suit was adjourned from time to time to furnish the report. Ultimately, the report was filed by the learned commissioner after a long time gap. Thereafter, the learned Trial judge fixed a date for filing the written statement on May 1, 2004. Thereafter, certain adjournments were granted on the prayer of the defendants / petitioners. Special chance was granted to file the written statement. But, the defendants prayed for adjournment again. Thereafter, it was rejected and the learned Trial Judge fixed the next date on June 7, 2005 for ex parte hearing of the suit. This being the position, I find that at first, the suit was in the position that the matter in dispute might be settled on compromise. But the talks for compromise failed. In the meantime, the record was pending for submission of report of inspection by the learned commissioner appointed in the suit. Thereafter, the Court fixed certain dates for filing a written statement by the petitioners. But, ultimately when the written statement was filed, it was not accepted stating that as per provisions of the Amendment Act 22 of 2002 (of the C.P.C.), such belated written statement could not be accepted. Anyway, I find that it is a dispute between the tenants and the landlords and in consideration of the relief sought for, I am of the view that the dispute between the parties should be solved once for all and for that reason, the written statement already filed in the suit should be accepted, certainly upon payment of costs. In consideration of the nature of the relief and the relation between the parties, I am of the view that an amount of costs of Rs.1,000/- only would subserve the ends of justice. The learned lawyer for the petitioners has referred to decisions reported in (2007) 1 SCC 765 and 2009(1) CHN 488 in support of his contention. I have considered these decisions in arriving at the

conclusion. In view of the peculiar nature of the suit, the talk for compromise and the fact that the matter remained unnoticed by the parties for a considerable period for non-submission of the report by the learned commissioner, I hold that it would be better to dispose of the suit on contests expeditiously.

5. Accordingly, this application is allowed. The impugned order holding that the suit shall be heard ex parte, is hereby vacated. The written statement filed by the petitioners shall be accepted provided the petitioners pay to or deposit an amount of costs of Rs.1,000/-only in favour of the opposite parties herein in the learned Trial Court within two weeks from the date of communication of this order to the learned Court below. If no payment is made within the said period, this application shall stand as dismissed and the learned Trial Judge is at liberty to proceed with the hearing of the suit ex parte. This order is firm and mandatory.

6. The learned Trial Judge is directed to dispose of the suit within six months from the date of communication of the order.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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