

(2019) 01 CAL CK 0132

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (Co) No. 76 Of 2019

Deb Kumar Mondal

APPELLANT

Vs

Gour Hari Mondal & Ors.

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 CAL CK 0132

Hon'ble Judges : Sahidullah Munshi, J

Bench : Single Bench

Advocate : Kaushik Dey, S. Das, Saptangsu Basu, Probal Kumar Mukherjee, Shebatee Datta, Asis Debnath, Ahana Rakshit

Final Decision : Disposed Off

Judgement

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Title Suit No. 80 of 2007 pending before the learned Civil Judge (Senior Division), 3rd Court at Howrah. In support of the prayer for transfer the petitioner had agitated before this Court the only ground that the Court is acting bias against the defendant/petitioner.

The learned Advocate Mr. Dey appearing for the petitioner submits that from the very beginning the Court is refusing to grant adjournment in favour of the defendant/petitioner and which will constitute sufficiently the bias against his client. The suit is essentially a suit for partition between the parties. The defendant filed a counter-claim in the suit. Ultimately, the suit for partition has been decreed in preliminary form and the defendant's counter-claim has been rejected. Against the dismissal of the counter-claim the defendant has filed an appeal before this Court. An appeal is also pending before the learned District Judge against the Judgment and preliminary decree passed in the aforesaid suit. In none of the suits any order of stay has been obtained by the defendant/petitioner. The appeal which is pending before this Court is F.A.T. 310 of 2018.

On perusal of the order which is at page 46 of the application under Section 24 it appears that the appeal itself was incompetent inasmuch as the appeal was not valued at the value of the counter-claim. Therefore, the appeal is incompetent for which the Hon'ble Division Bench has not passed an order of stay but granted the defendant/petitioner to pray for adjournment before the learned Court. The said order was passed on 3rd October, 2018.

In the meantime, however, the learned Trial Court proceeded for the final decree, Commissioner was appointed and the Commissioner filed his report before the Court. At this juncture, prayer for adjournment was made before the learned Court below. On refusal of the prayer for adjournment on one occasion on the ground that certified copy of the Commissioner's report was not made available by the Trial Court to the petitioner, he could not file his objection and being aggrieved by the order refusing to grant an order for delivery of certified copy the petitioner moved before this Hon'ble Court and the learned Court by an order dated 30th October, 2018 passed an order directing "if the petitioner files the above objection within November 20, 2018 the learned Court below shall decide such objection within December 15, 2018 upon notice to all parties".

In view of such order made by this Court in a revisional application under Article 227 of the Constitution the learned Court below tried its best to dispose of the proceeding within the time limit fixed by this Hon'ble Court. It is the grievance of the defendant/petitioner that on cogent grounds application for adjournment was sought for and according to him the Court below did not consider the grounds for which such adjournment was prayed for. Therefore, this will sufficiently constitute, according to him, the bias against the party. On perusal of the order dated 11th January, 2019 it appears that the learned Court below has not committed any wrong in refusing to grant adjournment. The matter, however, was adjourned till 14th January, 2019 and on which day the learned Court below opined to allow the application for adjournment on that day and fixed the matter on 8th February, 2019.

On perusal of both the orders dated 11th January, 2019 and 14th January, 2019 it appears that the Court has not acted bias in any way. The Court was trying to act in terms of the time limit granted by this Court. If the bias as agitated by the petitioner is to be accepted then by no stretch of imagination Court would not have by order dated 11th January, 2019 adjourned the matter till 14th January, 2019 and again when it was taken up for further consideration on 14th January, 2019 the Court would not have opined to allow the application for adjournment. Therefore, if the application for adjournment made by the party was allowed, how the question of bias comes in is not understood. Petitioner submits that the learned Court below ought to have granted stay in view of the pendency of the appeal but looking at the order passed by the Hon'ble Division Bench where the appeal is pending, only prayer for adjournment was permitted to be made before the Court below. There is no order of stay as on date. Undisputedly, the appeal is not in form and also the same is an incompetent appeal where the Court cannot

pass an order of stay.

Mr. Dey, learned Advocate appearing for the petitioner has relied on a decision in the case of R. Aurnagiri & Ors. -Vs.- C. Ranganathan & Ors., reported in 1987 Supple SCC page 48. On perusal of the said decision it appears that the Hon'ble Apex Court observed while dealing with a special leave petition that where an application under Section 24 is taken out, and, is pending, the Court below ought to have entertained the prayer for adjournment. The opinion of the Hon'ble Supreme Court can be made applicable only in respect of a particular set of facts which has not been mentioned in the said decision. Therefore, the ratio of the said decision cannot be applied in the present case which has got a fact of its own where the petitioner does not deserve to get an order of adjournment and if an order of further adjournment is to be granted in this application this will clearly contradict the order passed by one of my learned Brothers in this Court.

In such a situation the prayer for adjournment by the defendant is unjustified and that sole ground is not at all sufficient for the petitioner to seek transfer of the suit before any other Court. If the petitioner's prayer for transfer is allowed on this ground this will give a wrong signal to the entire subordinate judiciary. In such circumstances, I am not inclined to entertain the prayer for transfer.

The revisional application is, thus, disposed of.

However, the petitioner may approach the Hon'ble Division Bench, where the appeal is pending, for appropriate order of stay, if he is so advised.