

Ej Suit 51 of 2017
WBPS01-000099-2017

Before: Smt. Sudipa Banerjee, Ld. Judge, 3rd Bench

Order No: 34

Date: 16-02-2024

Today is fixed for P. hearing of the suit, discovery if any, in the mean time.

Plaintiff files hazira.

Defendant no 4 and 5 file a petition under Section 151 of C.P.C. and another petition for taking off the suit from P. Hearing board on the grounds stated therein. Copy served with endorsement 'objected to'.

Now, the petition for taking off the suit from P. Hearing board filed by the defendant no 4 and 5 is taken up for consideration.

Heard. Perused the petition and materials on record.

Considered.

Prayer for taking off the suit from P. Hearing board is allowed.

Let the suit be taken off from P. Hearing board.

Now, the petition under Section 151 of C.P.C. filed by the defendant no 4 and 5 dt. 16.02.2024 is taken up for hearing.

Heard Ld. Advocates for both sides. Perused the petition and materials on record.

Considered.

By the instant petition, defendants have contended that, in terms of order no 29 dt. 28.03.2023 passed by this Court, Ld. Advocate commissioner has conducted the commission work and submit her report on 26.09.2023. But the said commission work was done by the Ld. Advocate commissioner ex-parte in absence of the defendants. As such, the defendants have prayed for an order seeking direction upon the Ld. Advocate commissioner to hold the commission work in presence of the defendants and their Ld. Advocate.

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Ld. Advocate for the plaintiff has raised objection.

On perusal of the commission report it appears that, Ld. Advocate commissioner had served the notices to the both parties prior to conducting the commission work. However, several adjournment were being taken on behalf of the defendants. On 21.09.2023 Ld. Advocate commissioner hold the commission work ex-parte since, no one was present on behalf of the defendant.

Now as it appears, it is admitted position of the parties that commission work held on 21.09.2023 was conducted in the absence of the defendants. Therefore, in order to give the defendants a fair chance to contest the suit on merit and to represent their case properly, this Court finds that an opportunity should be given to the defendants to remain present at the time of holding commission work, however, the plaintiff and Ld. Advocate Commissioner should be compensated with cost.

Considering such facts and circumstances, this Court is inclined to allow the petition filed by the defendant no 4 and 5 this day.

Accordingly, it is

O R D E R E D

that the petition under Section 151 of C.P.C. filed by the defendant no 4 and 5 is hereby allowed subject to payment of cost of ₹ 2000/- payable by the defendants to the plaintiff for unnecessary delay and harassment.

Defendant no 4 and 5 are further directed to pay a sum of ₹ 4000/- to the Ld. Advocate commissioner Smt. Soma Mukhopadhyay by hand as additional commission cost.

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Smt. Soma Mukhopadhyay, Ld. Advocate commissioner is directed to hold the commission work again in presence of both parties and their Ld. Advocates, after serving prior notice to them.

Ld. Advocate Commissioner is further directed to conduct and complete the work of commission in one day and submit her report as expeditiously as practicable, preferably within one month from the date of this order. Inform all concerned accordingly.

Office is directed to hand over the writ of commission, a copy of this order and a copy of the petition under Order 39 Rule 7 of C.P.C. to the Ld. Advocate Commissioner.

At this stage, defendants file a petition for adjournment on the grounds stated therein.

Heard. Prayer for adjournment is considered and allowed.

Fix 18-03-2024 for filing commissioner's report and further order.

Sd/-

Sudipa Banerjee
[J.O. Code: WB01148]
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta