

Ejectment Suit 55 of 2022.

[CNR No WBPS 01 000742 2022]

Before – Sonia Majumdar- Ld. Chief Judge.

Order No:-10.

28-02-2023.

Parties file haziras.

Today is fixed for passing order in respect of the petition filed by defendant no-2 u/o-IX Rule 9 of C.P Code dated 30-01-2023.

Record is taken up for passing order.

By filing the instant application u/o-IX Rule 9 of C.P Code dated 30-01-2023 , defendant no-2 has prayed for vacating the order of ex-parte of hearing of the instant Ejectment Suit on the ground stated therein.

At the time of hearing, Ld. Advocate for the defendant no-2 submitted that his petition praying for supply of copy of plaint is pending and since the plaintiff failed to provide him with the copy of plaint and other documents, defendant no-2 could not file W/S. It is further submitted that defendant no-2 is very much willing to contest the suit as such prayed for vacating the order of ex-parte hearing.

Against this, Ld. Advocate for the plaintiff raised vehement objection against the submissions of the defendant no-2 and submitted that the defendant no-2 is actually a sublettee and by filing application u/o-1 Rule 10(2)C.P.C, defendant no-2 made herself as a party to the suit. Therefore , she has all the necessary knowledge of the suit and non receipt of copy by her for not filing w/s is just an excuse. Moreover, the instant petition is made u/o-IX Rule 9 of C.P Code which is not applicable here and therefore the instant petition is not maintainable in its present format in the eye of law. He prayed for rejection of the petition with cost.

Heard both sides. Perused the petition. Materials on record.

Perusal of provisions u/o-IX Rule 9 of C.P C. reveals that it deals with “*decree against plaintiff by default bars fresh suit*”-

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit , and shall appoint a day for proceedings with the suit.

In the present petition, defendant no-2 has prayed for vacating the order of ex-parte hearing. So, the above provision of law is not at all applicable here. Accordingly, vide Order no-09, dated 30-01-2023, this Court has already observed that the petition u/o-IX Rule 9 of C.P Code has been filed defendant no-2 by quoting wrong Section of law, which is only a technical fault.

Be that as it may, the sum and substance of the petition of defendant no-2 is that defendant no-2 is praying for vacating the order of ex-pate hearing passed against her. The ground cited by defendant no-2 is that the petition filed by defendant no-2 dt 14-09-2022 praying for supplying of copy of the plaint has not yet been disposed of and no copy of plaint has not been served upon him till date. It is further contended that due to miscommunication and necessary instruction, Ld. Advocate for the defendant no-2 could not conduct the case on 14-12-2022. It may be mentioned here that the instant suit is already proceeding ex-parte against defendant no-1.

Record reveals that filing application u/o-1 Rule 10(2) of C.P.C, defendant no-2 made herself as a party to the suit on 20-04-2022. It is also correct that the petition of the defendant no-2 dt 14-09-2022

praying for a direction upon the plaintiff to supply the copy of plaint has not been disposed of.

So, considering such factual aspect, and for the sake of natural justice, this Court finds that defendant no-2 may be given an opportunity to contest the suit on merit but the plaintiff should be compensated with cost.

Accordingly,

it is

Ordered

that the petition filed by defendant no-2 dated 30-01-2023 is hereby allowed on contest subject to payment of cost of Rs 500/-.

The order of ex-parte hearing dt 14-12-2022 against defendant no-2 is hereby vacated.

The petition filed by defendant no-2 dt 14-09-2022 is also allowed with direction upon the plaintiff to supply the copy of plaint to defendant no-2. Defendant no-2 is also directed to file Written Statement by the next date.

To (**21-04-2023**) for filing W/S by defendant no-2 and filing receipt showing payment of cost.

Chief Judge.

J.O .Code:- WB 01128