

EJECTMENT SUIT NO. 424 of 2013 (Reg No:- 5810 of 2014)
C.N.R No. WBPS01-000493-2013

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE COURT,
CALCUTTA
PRESENT: SMT. ARCHITA SEN, JUDGE, 4TH BENCH, PRESIDENCY SMALL
CAUSE COURT, CALCUTTA.

ORDER NO- 127
DATED 21-08-2024:

Today is fixed for hearing of the petitions dated 03/05/2024 filed by the defendant. Both the parties file separate attendance through their respective Ld. Advocates. The defendant also files two separate petitions today; one is with a prayer for changing the Ordering portion of the Order dated 16/05/2024 being Order no. 125 and another is with prayer for setting aside Order no.125 dated 16/05/2024.

At first the petitions dated 03/05/2024 are taken up for hearing.

Heard both sides.

Perused the record.

On perusal of the record it reveals that one of the petitions dated 03/05/2024 contains a prayer for a direction upon Jayashri Kar to adduce evidence regarding her ownership in terms of Order no.109 dated 16/11/2022. Another petition dated 03/05/2024 contains a prayer for staying all further proceedings in the suit until the evidence of Jayashri Kar be given in terms of Order no. 109 dated 16/11/2022.

It is submitted on behalf of the Ld. Advocate for the plaintiff that the plaintiff has no objection if the prayer of the defendant is allowed by this Court and the Ld. Advocate for the plaintiff is ready with the evidence, for which the evidence in terms of Order no.109 dated 16/11/2022 may recorded, so that the hearing of the suit may be expedited.

This Court perused Order no. 109 dated 16/11/2022 wherein the predecessor in Chair of this Court has observed that the ownership of the petitioner ie Jayashri Kar has to be established by adducing evidence by the petitioner. As the plaintiff has expressed that she has no objection in adducing evidence regarding that point, this Court is inclined to allow the petition dated 03/05/2024 with a prayer for adducing evidence regarding her ownership in terms of Order no.109 dated 16/11/2022 on consent.

So far as the petition dated 03/05/2024 with a prayer for staying the further proceeding of the suit is concerned this Court is to decide for that recording of evidence of Jayashri Kar in terms of Order no. 109 dated 16/11/2022 is also part of the proceeding of this suit. So if the Court allows the prayer for staying the further proceeding of the suit then the evidence of Jayashri Kar cannot be recorded which is not at all desire of the defendant.

For that, it is

ORDERED

That petition dated 03/05/2024 with a prayer for adducing evidence of Jayashri Kar in terms of Order no. 109 dated 16/11/2022, filed by the defendant is allowed on consent.

The petition dated 03/05/2024 with a prayer for staying the further proceeding of this suit, filed by the defendant is rejected.

To 01/10/2024 for hearing of the petitions dated 21/08/2024.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

Judge, Bench-4
PSCC Calcutta
J.O Code WB01174

LATER :

ORDER NO- 128
DATED 21-08-2024:

Now the record is taken up for hearing of the petitions dated 21/08/2024 filed by the defendant.

Heard both sides.

Perused the record.

Considered.

One of the petitions dated 21/08/2024 contemplates an Order changing the ordering portion of Order no. 125 dated 16/05/2024 and another petition dated 21/08/2024 contemplates an Order setting aside the Order no. 125 dated 16/05/2024.

It is submitted by the Ld. Advocate for the defendant that on 04/05/2024 the date was fixed for hearing of the petitions dated 03/05/2024 not for the hearing of the petition dated 21/09/2021. So on 04/05/2024 the Ld. Advocate for the defendant made submissions regarding the petitions dated 03/05/2024 only and no scope was given to him for the hearing of petition dated 21/09/2021. He further submitted that the Order no. 125 dated 16/05/2024 does not reflect any of his submission regarding petition dated 21/09/2021. So he is entitled to get a chance for making submission on petition dated 21/09/2021. It is also submitted that it is a wrong on the part of the Ld. Judge and it can be rectified by this Court only.

Upon going through the submissions made by the Ld. Advocate for the defendant as well as the record this Court finds that on 04/05/2024 the record was fixed for 21/09/2021 as well as the petitions dated 03/05/2024 and on that day the Court heard both side in respect of both the petitions and the date of Order was fixed on 16/05/2024. While passing Order this Court finds that the petition dated 21/09/2021 was relating to the jurisdiction of this Court. For such reasons this Court thought it right to dispose of the older petition relating to the jurisdiction point first. Accordingly on 16/05/2024 the petition dated 21/09/2021 was disposed of. This Court does not consider it as a wrong on the part of the Court. Be that as it may this Court has passed an Order in respect of petition dated 21/09/2021 on merit after hearing both sides, as it reflects from the ordersheet. Now this Court cannot change any portion of the Order passed by itself when it is found that the “wrong” about which the Ld. Advocate for the defendant submitted, is not any arithmetical or clerical issue. This Court cannot sit upon its own Order and exercise jurisdiction of the Appellate Court in

respect of the Order passed by itself.

For that, it is

ORDERED

That petitions dated 21/08/2024 filed by the defendant is rejected on contest.

The petitions dated 21/08/2024 filed by the defendant are disposed of.

To date for evidence of Jayashri Kar.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

Judge, Bench-4
PSCC Calcutta
J.O Code WB01174

LATER :

ORDER NO- 129

DATED 21-08-2024:

At this stage Ld. Advocate for the plaintiff files further examination in chief of Amit Kar on behalf of plaintiff Jayashri Kar in terms of the Order no.109 dated 16/11/2022 along with a petition under section 151 of CPC with a prayer for permitting Mr. Amit Kar to depose on behalf of the plaintiff Jayashri Kar.

Copy served.

Ld. Advocate for the defendants intends to file written objection against such petition.

To date for hearing of the petition dated 21/08/2024 filed by the plaintiff, W.O, if any in the mean time.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

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J.O Code WB01174