

MISC. CASE NO. 204 OF 2017
EJ. SUIT NO. 1540 OF 2001
C. N. R. NO. WBPS01-000907-2017
Before Smt. Leena Sharma, Ld. Judge, 5th Bench.

ORDER NO. 146 DATED 03.02.2021

Today is fixed for ex parte hearing of the Misc. Case.

Petitioner filed hazira.

Hazira filed on behalf of the O.P.

Perused the record.

Ld. Advocate for O.P. has submitted that on 16.02.2019, one petition filed on behalf of O.P. no.1(e) for vacating the ex parte hearing against him and to allow him to file his W/O. He prayed for hearing of the petition today.

To the prayer of hearing, no objection raised by ld. Advocate for the petitioner.

After careful perusal of the record, it appears that one verified petition for vacating the ex parte hearing dated 16.02.2019 filed on behalf of O.P. no.1(e) is lying with the record. However, it is not mentioned in the order sheet.

In view of submission of both sides, the record is taken up for hearing of the petition dated 16.02.2019 filed on behalf of O.P. no.1(e) for vacating the ex parte hearing and for filing written objection.

Ld. Advocate for O.P. no.1(e) has submitted that at the time of call for the instant case, he was unable to appear before the Court as he was engaged in another matter in another Court and as such, his prayer for adjournment was rejected and the case was fixed for ex parte hearing. That after that order, he has filed the instant petition but could not move the same and as such, the same is lying with the record. That O.P. is willing to file his written objection and to contest the case. So, he prayed for vacating the order of ex parte hearing dated 16.02.2019 and allow him to file his W/O.

Ld. Advocate for the Petitioner raised strong objection to the prayer of O.P. no.1(e) and submitted that the O.P. is trying to drag the case by filing this kind of petition only to harass the petitioner. He prayed for rejection of the instant petition of O.P. no.1(e).

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Record reflects that on 16.02.2019, one adjournment petition of O.P. no.1(e) was rejected as none appeared to move that adjournment petition till 11.28 A.M. and the matter has been fixed for ex parte hearing against him. However, it appears that the instant petition for vacating that ex parte order was filed on the very date of fixing ex parte hearing of the case.

Considering the above discussion and submissions of both sides and the facts and circumstances of the case, the prayer for vacating the ex parte dated 16.02.2019 against defendant no.1(e) is allowed with cost of Rs.500/- to be paid to the plaintiff on condition to file written objection on the next date.

Fix 20.03.2021 for payment of cost of Rs.500/- and W/O by O.P.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]