

**Order No. 28, Dated 06.09.2022.**

Today is fixed for hearing of the petition dated 29.06.2022 submitted by defendant Nos. 1 and 2.

Parties file *hajirah*.

Written objection is submitted against the aforesaid prayer by the plaintiff. Copy served.

Submitting the petition the defendant Nos. 1 and 2 have prayed for accepting the causes shown by them and taking the suit off the *Exparte* Board. It has been contended that they were not served with the summons and as such they had no knowledge of the suit. They claimed to have learnt about it on 10.11.2021 and hence this petition. They have also submitted their written statements.

Plaintiff retorted saying that the present defendants appeared in Probate Application 02 of 2019 and on the basis of their objection the proceeding having assumed the proportion of being contentious, was returned to be submitted before the appropriate forum. Thereafter as these defendants did not turn up before the appropriate forum, the suit was fixed for *exparte* hearing as against them. Now, these defendants are attempting to contest the suit with the ulterior motive of demolishing the answers elicited from PW-1 at the time of his cross examination by the defendant No.3.

Plaintiff has submitted copies of documents in order to substantiate his claim regarding appearance of these defendants in Probate 02 of 2019.

Record reveals that posting receipts and postal track reports were submitted by the plaintiff on 17.07.2019 and on the basis of such reports the suit was fixed for *exparte* hearing as against defendant Nos. 1 and 2 on the self same date.

Suit is being contested by defendant No. 3 and cross examination of PW-1 has been concluded on 04.04.2022. One can find that summons were issued on 04.07.2019.

Order 8 Rule 1 of CPC specifies the time limit for allowing the defendant to present written statements of his defence, from the date of service of summons on him. In the proviso clause thereto the law givers have maintained that the time for submission of such written statement shall not be extended after expiry of the stipulated period for doing so.

It is quite obvious that the period stipulated for submission of written statements have expired long back.

The answering defendants have contended that they were never served with the summons. Reliance has been placed in this context on a judgment reported in 2002 (1) RCR 603, wherein the Hon'ble Apex Court did not accept service of summons in the facts of the case before it.

Coming back to this instant case I do not find any of such facts present in this case and as such the ration laid down therein can not be applied herein.

Order 9 Rule 7 of CPC provides that if the defendant appears and assigns good cause for his previous non appearance he may be heard in answer to the suit as if he had appeared on the day fixed for his appearance. However, the defendants have failed to assign any good cause for their previous non appearance. Naturally, the question of hearing them in answer to the suit, recording their appearance on the day fixed for doing so, does not arise.

Accordingly, the prayer submitted by the defendant Nos.1 and 2 is liable to be rejected, being misconceived. Causes shown by them are also not accepted.

Hence, it is,

Ordered

that the petition dated 29.06.2022 submitted by defendant Nos. 1 and 2 is rejected, on contest.

To 14.12.22 for hearing of the petition dt.10.05.2022.

D/C by me,

ADJ, FTC-II, Sealdah.

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