

O. S. 11 of 2018

Order no. 15
11-03-2020.

The plaintiff and the defendant no.1 are present by filing their respective haziras through their Ld. Counsels.

Today is fixed for hearing of a petition preferred u/s 151 CPC by the defendant no.1 on 09-09-2019 praying for recalling and / or setting aside the exparte order dated 22-02-2019 passed in this suit.

Perused the application in question and the WO thereto filed by the plaintiff on 28-11-2019 and considered the submissions of both the sides in the light of the materials on record.

The Ld. Advocate for the defendant no.1 submits that after receipt of summons of the present suit, the defendant no.1 had duly entered into appearance in this suit on 19-12-2018 and had filed all the necessary applications on the said date but as this Court did not find any prayer from the side of the defendant no.1 to praying for time to file WS as such this Court had directed the suit to proceed exparte against the defendant no.1 and fixed the present case for exparte hearing as well for hearing of the application filed by the plaintiff for appointment of administrator pendente lite on 22-02-2019. On 22-02-2019, the defendant no.1 had filed her WS but this Court did not accept the same as there was no application filed by the defendant no.1 to vacate the order of exparte hearing made against her on 19-12-2018 and by keeping the WS filed by the defendant no.1 along with the record proceeded to hear the application of the plaintiff for grant of administrator pendente lite and passed the order sought to be recalled by the present application. Subsequently, on 25-03-2019, the defendant no.1 had preferred an application for vacating the order of exparte hearing of the suit passed against her along with a Show Cause and had also given the liberty to the defendant no.1 to file appropriate application for vacating the exparte order dated 22-02-2019 for appointment of administrator pendente lite and in accordance with the said liberty the present application has been preferred by the defendant no.1. It is the assertion of the defendant no.1 that she has narrated all the facts and circumstances of the present suit in her Written Statement which clearly go to show that the plaintiff is not entitled to any relief as prayed by him in the plaint but as the order dated 22-02-2019 was passed exparte as such the said facts and circumstances could not be brought before the Court and accordingly the same was not taken into consideration while passing the said order. The defendant no.1 has also narrated the said facts and circumstances in paragraph 08 of the petitioner under consideration and has submitted that by suppression of the material facts before this Court, the plaintiff has been successful to obtain the said exparte order dated 22-02-2019. Accordingly, the defendant no. prays for recalling or setting aside the said exparte order dated 22-02-2019 and provide a chance to the petitioner to contest the said application on merit.

Strong objection is made on behalf of the plaintiff in respect of the said application preferred by the defendant no.1. It is submitted that the present application under reference is

misconceived and bad in law and the same has been preferred by the defendant no.1 out of her sheer greed of property. It is submitted that before the exparte order dated 22-02-2019 was passed by this Court several opportunities were given to the defendant no.1 to contest the matter but the defendant no.1 deliberately did not contest the matter and allowed the matter to be heard exparte. It is submitted on behalf of the plaintiff that the defendant no.1 has failed to show any justified ground for recalling the order dated 22-02-2019 and as such there is no reason as to why this Court should vacate the said order at the mere desire of the defendant no.1. According to the Ld. Counsel for the plaintiff, the application filed by the defendant no.1 is liable to be rejected with costs to the plaintiff.

Now, on perusal of the order sheet of this suit it is found that the application u/s 247 of the Indian Succession Act was initially heard by this Court on 12-10-2018 and this Court had rejected the prayer of the plaintiff for grant of an ad-interim order in respect of the said application and directed the plaintiff to serve notice on the defendants directing them to show cause as to why the prayer of the plaintiff u/s 247 of the Indian Succession Act shall not be allowed. It is not the case of the defendant no.1, as ventilated during the hearing of the present application or in the recitals application under reference that no such notice was issued on her. Be that as it may be, the defendant no.1 put up her appearance before this Court on 19-12-2018 but on that day she did not prefer any application to file WS in the suit or any objection against the application u/s 247 of the Indian Succession Act and accordingly this Court had fixed the suit and the said application for exparte hearing on 22-02-2019. So, it is clear that on 19-12-2018, when the defendant no.1 had appeared in the suit she would be presumed to have knowledge about the pendency of the hearing of the application u/s 247 of the Indian Succession Act on the next date of hearing of the suit. But on 22-02-2019, the defendant no.1 though filed her WS but did not file any WO against the application u/s 247 of the Indian Succession Act and accordingly the said application was heard exparte on the said date. On the said date the defendant no.1 also did not prefer any application for vacating the order of exparte hearing of the said application and pray for an opportunity to allow her to contest the said application. It is fact that the WS filed by the defendant could not be accepted on the said date due to some technical issues but it is found from the record that the defendant no.1 was duly represented by her Ld. Counsel on that day when the matter was called up for hearing but even in such a situation no steps was preferred by the defendant no.1 to contest the application u/s 247 of the Indian Succession Act. Subsequently, on 25-03-2019, the defendant no.1 rose from her slumber and orally appealed before this Court to recalled the order dated 22-02-2019 but even on the said date the defendant no.1 did not file any WO to the said application or any application to recall the order dated 22-02-2019. This Court, for sake of justice, granted opportunity to file an application for recalling the order dated 22-02-2019 so that the defendant no.1 could justify the grounds as to why the said order dated 22-02-2019 should be recalled by this Court and accordingly the defendant no.1 has preferred the application under reference. But, I am afraid that on perusal of the entire application of the defendant no.1, I do not find any reasons assigned by the

defendant no.1 as to why she allowed the said application u/s 247 of the Indian Succession Act to be heard exparte in spite of having an opportunity to contest the same on 22-02-2019 by her WO and more so when she was aware about the pendency of the said application after putting her appearance in the suit on 19-12-2018. It is found that in para - 02 to 05 of the present application the defendant no.1 has narrated the incidents of the record which allowed her to prefer the present application while in para - 06 and 10 of the present application she has mentioned about the reasons as to why her WS was not initially accepted by this Court. In para 07 and 08 of the said application, the defendant no.1 has asserted about the reasons which, if proved, may disentitle the plaintiff from the reliefs prayed by him in the suit. It is only mentioned in para 09 and 11 of the application in question that as the plaintiff has suppressed the material facts before this Court to obtain the order in question and as on account of reasons assigned by the defendant no.1, the plaintiff would not be able to obtain the reliefs claimed in the suit as such the order dated 22-02-2019 should be recalled. But I do not find any assertion on the part of the defendant no.1 in the entire length and breadth of the present application as to what prevented her to contest the said application on 22-02-2019 by filing a WO to the same or even to pray before the Court to for adjournment to allow her to file the WO and also to pray that the said application may not be heard exparte. The defendant no.1 was duly represented by her Ld. Counsel before the Court on 22-02-2019 and in spite of the said fact she did not instruct her Ld. Counsel to take appropriate steps to enable her to contest the application u/s 247 of the Indian Succession Act and she had intentionally and deliberately allowed the said application to be heard exparte. It is a settled principle of law that an exparte order can only be recalled if the defendant is able to satisfy the Court that he or she was prevented by sufficient reasons from appearing before the Court and contest the matter when the said matter was taken up for hearing and in the present case, I am afraid to note that. The defendant no.1 has miserably failed to male out any such ground. So far,the grounds mentioned in para 07 and 08 of the application is concerned, those are matters to be adjudicated after taking evidence on record and without the said allegations being proved it would not be fit and proper to recall an order already passed by this Court after due and proper consideration of all the facts and circumstances of the case that was present before it at the time of passing the order in question.

In view of the above discussion, I am of the considered opinion that there is no justified reasons to recall the exparte order dated 22-02-2019 passed in this suit in respect of the application u/s 247 of the Indian Succession Act and the present application filed by the defendant no.1 calls for a negative respond.

Hence, it is

ORDERED

That the application u/s 151 CPC filed by the defendant no.1 to recall the order dated 22-02-2019 is hereby rejected on contest but without any order as to costs.

The plaintiff is however directed to serve copies of the Statement of Accounts filed by him before this Court to the defendant no.1 and the defendant no.1 is hereby given the liberty to raise

appropriate objection against the acts of the plaintiff as the administrator pendente lite, if the same is found to be done in violation of the said order dated 22-02-2019.

At this stage, the Ld. Advocate for the plaintiff has supplied to the defendant no.1 the statement of accounts for the month of January 2020 along with all its annexures and has filed a receipt of the same. Let the same be kept with the record.

The Statement of Accounts filed for the month of January 2020 as filed by the plaintiff today along with annexures be also kept with the record.

Be it mentioned here that the Statement of Accounts filed by the plaintiff for the previous months are also lying with the record.

To 29-04-2020 for framing issues.

D/C

ADJ, FTC-II, Sealdah

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