

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

G.A /3/2023

TS/1/2022

IN THE GOODS OF: SRI DHIRENDRA MOHAN OJHA (DEC.)

AND

SMRITIREKHA OJHA AND BIVA NANDY

VERSUS

MUKTI OJHA (KUMAR), MALA OJHA (KUNDU), DIPTI OJHA, TRIPTI
OJHA (ROY) BANANI OJHA (INDU)

BEFORE:

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 11th July, 2023

Appearance:

Mr. Manabendranath Bandyopadhyay, Advocate

Mr. Ashutosh Pathak Advocate

...for the plaintiff

Mr. Jayanta Sengupta, Advocate

Mr. Arnab Dutt, Advocate

Ms. Labani Dey, Advocate

...for defendants/caveatrix

THE COURT:- Learned Advocate for the Caveatrix/defendant has submitted that in spite of several opportunities given to the learned Advocates for the plaintiffs, they did not take any step for discovery and inspection. Learned Counsel has also drawn attention of this Court to the order passed by this Court on February 4, 2022 whereby the Hon'ble Judge has been pleased to direct the parties to conclude discovery and inspection of the documents within eight weeks and accordingly, learned Counsel has issued two notices on 30th March, 2022 and 19th June, 2023 to the learned Advocate-on-Record of the plaintiffs. But neither they inspected the documents of the defendants nor the plaintiffs took any step to disclose their documents. As such by the instant application the learned Advocate has prayed for dismissing the suit

as the directions of this Court were not followed by the plaintiffs and further he has also drawn the attention of this Court to the provisions as laid down in Order XI Rule 21 of CPC.

Learned Counsel appearing for the plaintiffs raises strong objection. According to him, this is a changed brief and he appeared on 3rd July, 2023 and issued notices which are lying with the Department and as such he has complied with the direction. However, the learned Counsel has also pointed out that the plaintiff is a senior citizen aged about 70 years and she has been suffering from several ailments. Moreover, her son has also met with an accident for which the plaintiff could not take proper steps at the relevant point of time.

After considering the relevant provisions under Order XI Rule 21 as well as Chapter XI Rule 7A of the Original Side Rules, I am of the opinion that the provisions have vested some discretion upon this Court whether to allow the prayer of the instant petition or not.

After considering the submissions of both sides and also considering the facts that the plaintiff is a senior citizen and her son has met with an accident for which documents have been produced before this Court on earlier occasions, I am of the view that the plaintiff should be given an opportunity to serve a specific notice required under law upon learned Advocate-on-Record of the defendant as a last chance for discovery and inspection.

Learned Advocate for the defendant is also directed to issue a fresh notice upon learned Advocate of the plaintiff for discovery and inspection of the documents of the defendant.

List this matter after two weeks. In the meantime, discovery and inspection shall be completed by both sides.

The application being GA/3/2023 is disposed of.

[APURBA SINHA RAY, J.]

dg/