

Order No.18

07.01.2019

Today the petition dated 17.02.17 filed by the appellants praying for exempting the service of memorandum appeal upon the proforma defendants/respondents no.17 to 39 on the ground as stated therein is taken up for hearing.

Heard the Ld. Advocate appearing for the appellants in support of the above petition. Perused the instant memorandum appeal as well as LCR including judgment and decree appealed against. As I heard from the Ld. Advocate for the appellants and after perusing the petition, I find that the appellants have sought the exemption from service of memorandum of appeal upon the above proforma defendants/respondents namely upon proforma defendants/respondents no.17 to 39 only on the ground that they did not appear and contest the suit before the Ld. court below and as such the petition has been submitted in terms of Order 41 Rule 4 of the Civil Procedure Code.

The legislative object of the above Order 41 Rule 4 of the Civil Procedure Code is to avoid delay in the civil proceeding by way of avoiding to serve notice of the case upon the parties who in fact did not appear and contest the nor filed any address of service in respect of the case against which the appeal has been preferred. In consideration of the above objective I have carefully perused the LCR and I find that the above proforma defendants/respondents being proforma defendants/respondents no.17 to 39 did not appear and contest the original suit in the court of first instance.

Therefore the above prayer of the appellants under petition dated 17.02.2017 seeking exemption from the duty of serving notice of the memo of appeal upon the proforma defendants/respondents no.17 to 39 merits consideration and as such the same should be allowed.

As I see that the instant case is pending consideration of its admission for which this court at this stage heard the Ld. Advocate and after hearing and perusing the memo of appeal I find that the memorandum of appeal has been filed correctly as regards limitation and others. Thus the appeal is admitted.

Hence, in the result

it is **Ordered**

that the petition of the appellants dated 17.02.2017 seeking exemption from serving memorandum of appeal upon proforma defendants/respondents no.17 to 39 is considered and allowed. As a result the appellants need not to serve the memorandum of appeal upon the proforma defendants/respondents no.17 to 39.

Bench clerk is directed to record a suitable note of this order in the cause title of the memorandum of appeal showing such exemption as granted in favour of the plaintiffs.

Appellants are now directed to serve the notice of memorandum of appeal upon the respondents no.1 to 7. Thus accordingly they are directed to take step at once.

Fixing 28.02.2019 for SR and appearance against the respondents no.1 to 7.

Dictated & corrected by me.

Sd/-

Addl. District Judge,
Fast Track 1st Court, Jangipur,
Murshidabad.
07.01.2019

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Fast Track 1st Court, Jangipur,
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