

HIGH COURT OF TRIPURA

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CRP. No.09 of 2023

For Petitioner(s) : Mr. S. Lodh, Advocate.

For Respondent(s) : Mr. S. B. Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

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23/03/2023

Heard Mr. S. Lodh, learned counsel appearing for the petitioner.
Also heard Mr. S. B. Debnath, learned counsel appearing for the respondent.

The present petition has been filed under Article-227 of the Constitution of India for quashing/setting aside the impugned order dated 22.11.2021 passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala, Court No.4 in connection with T.S. No. 05 of 2017 whereby, the learned Civil Judge, Sr. Division rejected the petition for granting leave to the petitioner to produce documents.

The petitioner has prayed for the following reliefs:

“Under the circumstances stated above, it is most humbly submitted that Your Lordship would be kind enough issue rule calling upon the respondent to show cause as to why the impugned order dated 22.11.2021 passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala, Court No.4 (Shri S. B. Das) in T.S.05 of 2017 (Annexure-9 supra) should not be set aside and direct the learned Court below to permit the petitioner to produce the documents, and pass an interim order staying the further proceeding of T.S.05 of 2017, pending before the learned Civil Judge (Senior Division), West Tripura, Agartala, Court No.4, and pass any other order(s) as may be deemed fit and proper ends of justice.”

The case of the petitioner is that due to ailment of the counsel of the petitioner, he could not cross-examine the witness of the plaintiff and failed to submit the document and submit examination-in-chief of the witness of the defendant side. Thereafter, the petitioner filed 3 separate applications for allowing him to cross-examining the witnesses of the plaintiff and to grant

leave to submit documents and to submit examination-in-chief of the witness of defendant side.

After hearing the parties, the learned Court below by order dated 22.11.2021 allowed the prayer to cross-examine the witness of the plaintiff, but rejected other two petitions. Challenging the impugned order dated 22.11.2021 (Annexure-10), the petitioner has filed the present petition whereby, the learned Court below rejected the petition for granting leave to the petitioner to produce the documents.

Mr. S. Lodh, learned counsel appearing for the petitioner has submitted that the reasons for failing to cross-examine the witness of the plaintiff as well as non-filing of documents and examination-in-chief from the side of the defendant are ailments of engaged counsel of the petitioner. The petitioner has filed the application for allowing him to cross-examine the prosecution witness granting leave to submit documents and application for allowing him to submit examination-in-chief were filed enumerating the ground of ailment of conducting counsel. But, the learned Court below vide order dated 22.11.2021 allowed the petition to cross-examine the witness of the plaintiff, but rejected other two petitions.

When the learned Court below accepted the contentions in one petition, ought to have allowed the other two petitions also, but the Court below without appreciating the fact of ailment of the conducting counsel rejected the petitions for granting leave to submit document and adduce witness from the side of the petitioner. It is further submitted that if the petitioner fails to adduce evidence and produces documents, he will highly be prejudiced and the same is not intentional and is totally out of his control.

Mr. S. B. Debnath, learned counsel appearing for the respondent has failed to establish his case on medical ground that the conducting counsel

for the petitioner at that relevant point of time was not present due to ailment and no evidence was placed before the Court in support of his case.

In view of above and after interacting with the learned counsel appearing for the parties, this Court is of the opinion that the ends of justice one more opportunity should be given to the petitioner for placing his submission and produce relevant documents and thus, ordered. As such, the present petition stands allowed consequently, the impugned order dated 22.11.2021 stands set aside. The matter is remand back to the Court below for fresh adjudication.

Accordingly, the present writ petition stands disposed of. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A. Ghosh



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