

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.67/2024

Sri Umacharan Namasudra, S/O. Late Nabin Ram Namasudra, of Village-Kamarghat, P.O. Laljuri, Kanchanpur, District-North Tripura.

..... Petitioner(s).

V E R S U S

1. Sri Harendra Nath,

2. Sri Pabindra Nath,

Both S/O. Late Akshay Nath, of Village-Shibnagar, P.O. & P.S.-Kanchanpur, District-North Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

01/08/2024

Heard Mr. G.K. Nama, learned counsel for the petitioner.

2. The present revision petition arises out of an order dated 06.05.2024 passed in T.S. No.22 of 2019 by the learned Civil Judge (Sr. Division), Court No.2, North Tripura, Dharmanagar.

3. The title suit is proceeding *ex parte* since 2022. The plaintiff claiming himself to be an old person above 80 years of age prayed for recalling of the order dated 21.06.2022 by which the stage of filing of documents was closed by the learned trial Court and also for recall of the order dated 09.03.2023 by which the application dated 05.11.2022 filed by the plaintiff for calling for the oral testimonies of the defendants in the earlier suit being T.S. No.34 of 2012 and for filing additional documents in the present case, such as, certified copy of Khatian No.24/5 was disallowed.

4. Mr. G.K. Nama, learned counsel for the petitioner, submits that the learned trial Court fell in error in refusing to allow the application for recall of the orders dated 21.06.2022 and 09.03.2023 and permit the plaintiff to adduce these documents which are vital for adjudication of the case of the parties. It is submitted that the plaintiff being an old male could not pursue the suit properly and had to change his counsel on three occasions as the suit was being neglected by each of the two predecessor lawyers engaged by him. It is submitted that since the suit is proceeding *ex parte*, no prejudice would be caused to the defendants. Learned counsel for the petitioner submits that the suit is now at the stage of arguments. He relies upon a decision of the Apex Court in the case of **Rafiq vrs. Munshilal** reported in **AIR 1981 SC 1400** in support of his submission that if the proceedings have suffered on account of default of the counsel, the party should not be made to suffer. A party who has engaged a counsel to represent him is not supposed to act as a watchdog of the advocate to ensure that the latter appears in the matter when it is listed. Therefore, the Apex Court restored the appeal which was dismissed for default. Same principle should be applied in the present case.

5. I have considered the submission of learned counsel for the petitioner and taken note of the pleadings placed from record. I have also gone through the orders dated 21.06.2022 and 09.03.2023 and the impugned order dated 06.05.2024.

6. As the chronology of dates and events disclosed, the application to adduce additional documents was made by the plaintiff on 09.03.2022 though

several opportunities were granted to the plaintiff before framing of the issues but again on 13.01.2022 time was prayed by the plaintiff for filing of documents which was rejected and issues were framed. On 09.03.2022 the plaintiff filed an application under Order VII Rule 14(3) of the CPC read with Section 151 of the CPC again praying for allowing him to file documents. In the meantime, the case had proceeded *ex parte* against the defendants. But for the sake of justice, the said prayer of the plaintiff was allowed vide order dated 04.05.2022 and on the next date, i.e. 21.06.2022 plaintiff was directed to file the documents and examination-in-chief of the remaining witnesses. On the said date, the plaintiff did not file any document or examination-in-chief of any other witness and that stage was closed. Thereafter, on 28.07.2022 the plaintiff filed some more documents in the case without any supportive application. On that date, cross-examination of the PW was done and the next date was fixed for argument. Therefore, since 21.06.2022 the examination of the plaintiff witnesses continued and the learned trial Court while dealing with the application filed by the petitioner under Order XIII Rule 10 of the CPC read with Section 151 of the CPC did not deem it proper to allow the application dated 05.11.2022 for filing of further documents, such as, Khatian and the certified copy of the deposition of certain defendants in T.S. No.34 of 2012. In this period, the petitioner changed his counsel for the third time and thereafter again an application was filed under Sections 114 and 151 of the CPC for review/recall of the order dated 09.03.2023 and the order dated 21.06.2022 which has been rejected by the impugned order. The case is now at the stage of arguments. As it appears from the chronology of facts taken note above, despite indulgence granted by the learned trial Court as back as 04.05.2022, the

documents sought to be adduced by the plaintiff were not produced. Such indulgence was granted by the learned trial Court even though earlier several opportunities were granted to the plaintiff before framing of the issues. The learned trial Court, therefore, felt that the plea that the previous counsel had not properly pursued the matter was not correct since the order dated 09.03.2023 was a proper speaking order after hearing the learned counsel for the plaintiff. Once again the learned counsel has also been replaced by the plaintiff and this petition has been filed for recalling of the orders dated 21.06.2022 and 09.03.2023 when this case is at the stage of arguments.

7. Having considered the submission of learned counsel for the petitioner and having taken note of the aforesaid facts and circumstances, this Court is of the opinion that it is too late in the day for the plaintiff to seek an indulgence to adduce further documents when the suit is at the stage of arguments and moreover, it is proceeding *ex parte*. The plaintiff cannot be allowed to have such a long rope to stretch the proceedings of the suit which is pending since 2019. The judgment relied upon by the learned counsel for the petitioner in the case of **Rafiq** (supra) indicates that the appeal was dismissed for default under Order XLI Rule 17 of the CPC on the fault of the counsel on one occasion. In that context, the Apex Court had observed that the litigant having engaged a counsel to appear and represent him cannot be expected to act as a watchdog of the advocate to ensure that he appears in the matter when it is listed. Had the first counsel been negligent, at least the plaintiff was expected to pursue the matter sincerely with the second counsel. However, instead of pursuing the matter diligently, the case is being dragged on for two

years now on such an application for adducing documents and counsels have been repeatedly changed by the plaintiff to justify that the neglect is on the part of the counsels. It, therefore, does not appear that there is infirmity in the order impugned. Therefore, this Court is not inclined to interfere in the matter under Article 227 of the Constitution of India.

8. Accordingly, the instant revision petition is dismissed.
Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ



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