

GAHC010086682023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/124/2023

PRANJAN BARUAH
S/O SRI NONI BARUAH, R/O BORKOLA, P.O. AND P.S.-SIMALUGURI, DIST-
SIVASAGAR, ASSAM

VERSUS

SMTI NIRUPAMA BHUYAN
W/O SRI PRADIP KUMAR BHUYAN, R/O RAM KRISHNA NAGAR NO. 1,
LITCHUBARI, P.O. AND P.S.-JORHAT, DIST-JORHAT-785001

For the Petitioner(s) : Mr. B. Sarma, Advocate

For the Respondent(s) : Mr. R. Sensua, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 01.04.2024

1. This is an application under Article 227 of the Constitution of India challenging the order dated 24.03.2023 in Money Suit No.60/2017 whereby the application filed under Order XVIII Rule 17 of the Code of Civil Procedure, 1908

(for short "the Code") filed by the defendant who is the Petitioner herein was rejected.

2. This Court has duly perused the evidence of DW-1 which have been enclosed as Annexure-XII to the instant proceedings. The DW-1 is the Branch Manager of Punjab National Bank, Simulguri Branch. The evidence of the said witness was taken on 08.08.2022. Thereupon, it is not known as to what transpired or what steps have been taken by the Defendant but on 07.11.2022 i.e. almost after 3 (three) months, an application was filed under Order XVIII Rule 17 read with Section 151 of the Code to recall the said witness in order to clarify the ambiguity made in his deposition. There is nothing mentioned why at the time of the examination of the DW-1, the Defendant had not sought for re-examination before the Trial Court or immediately thereafter. It is only seen from the said application which was filed on 07.11.2022 that the witness was to be recalled to clarify the ambiguity made in his deposition. Objections were duly filed and the learned Trial Court vide an order dated 24.03.2023 had rejected the said application.

3. This Court had duly perused the impugned order dated 24.03.2023 and the learned Trial Court has rejected the said application only on the ground that if recalling of the witness is permitted, it would amount to filling up the lacuna. It is however not understandable as to how the learned Trial Court could have reached to the said opinion without even recalling the witness and the witness being put to re-examination. The law as regards the re-examination of the witness is very clear. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of Rammi Vs. State of M.P. reported in (1999) 8 SCC 649 and reproduce paragraph Nos. 16 and 17 of the said judgment herein under:

“16. The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus:

*“138. * * **

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when the ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.”

4. In view of the above quoted law laid down, it is the opinion of this Court that the learned Trial Court ought to have allowed the said application so filed. The learned Trial Court could have during the course of re-examination regulated the proceedings as to whether the same amounted to filling up the lacuna or clarifying the ambiguity or explained matters which were brought down in cross-examination.

5. Accordingly, this Court interferes with the order dated 24.03.2023 passed by the learned Trial Court in Petition No.5179/2022 dated 07.11.2022 and directs the learned Trial Court to recall the DW-1. The learned Trial Court during the examination of DW-1 shall be at liberty to regulate the questions being put to the witness as to whether the said questions pertain to clarification of the ambiguity brought down during the cross-examination or in relation to the filling up of any lacuna. This Court further observes that if during the process, any new fact is introduced, the plaintiff in the suit be permitted to re-cross examine the witness.

6. With above observations and directions, the instant petition stands allowed.

7. The interim order passed on 03.05.2023 by this Court stands vacated and the parties who are duly represented before this Court are directed to appear before the learned Trial Court on 02.05.2024.

JUDGE

Comparing Assistant