

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.14 of 2025

Shri Joyesh Dey, Age-37 years, S/o Late Bhagirath Dey, Resident of Rajdharnagar, P.O. Jamjuri, P.S. Kakraban, District- Gomati Tripura, PIN-799116

.....Petitioner(s);

Versus

Shri Debabrata Biswas, Sub-Inspector of Police, attached to Ramnagar Outpost, P.O. Ramnagar, District- West Tripura, PIN-799002

.....Respondent(s).

For Petitioner(s) : Mrs. Mampi Chakraborty, Advocate.

For Respondent(s) : Mr. Tapash Datta Majumdar, Sr. Advocate,
Mr. Dalit Kalai, Advocate,
Ms. Rimi Debbarma, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

02/05/2025

Heard Mrs. Mampi Chakraborty, learned counsel for the petitioner and Mr. Tapash Datta Majumdar, learned senior counsel for the respondent.

2. The prayer for time to adduce the sole witness for the plaintiff i.e. the plaintiff himself was refused on 03.02.2024 as it was the fifth consecutive occasion of prayer for time by the plaintiff. The learned Trial Court directed the defendant side to file examination-in-chief. Then petitioner preferred two applications – one under Section 151 of the Code of Civil Procedure, 1908 [‘CPC’, *for short*] dated 13.02.2024 for accepting the examination-in-chief of the plaintiff witness and another under Order VII Rule 14(3) of the CPC to produce Schedule of documents. After hearing both sides, the learned Trial Court vide impugned order dated 19.09.2024 rejected the application under Section 151 of the CPC taking note of the previous order dated 03.02.2024 which had remained unchallenged, but allowed the petition under Order VII

Rule 14(3) of CPC to submit documents on the next date fixed. Being aggrieved with part of the order whereby the application for adducing sole plaintiff witness No.1 by invoking Section 151 of the CPC was rejected, the petitioner preferred the instant revision petition on 17.02.2025.

3. During course of submission, learned counsel for the petitioner has produced the order dated 18.01.2025 whereby the learned Court had taken into note that the defendant is not going to adduce any evidence on his behalf. Therefore, the date was fixed for argument.

4. The sheet anchor of the case of the petitioner is that the plaintiff would suffer from miscarriage of justice and moreover won't be able to submit the additional documents under Order VII Rule 14(3) of the CPC unless the plaintiff adduces himself i.e. PW 1. This could present an anomalous situation. Learned counsel for the petitioner submits that if the Court allows one indulgence, the plaintiff would be appearing in the witness box on the very next date and conclude his examination-in-chief subject to cross-examination by the other side. Therefore, the impugned order may be interfered in exercise of powers under Article 227 of the Constitution of India. Learned counsel for the petitioner, relying upon a decision of the Apex Court in the case of **K.K. Velusamy v. N. Palanisamy** reported in **(2011) 11 SCC 275**, submits that Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The Apex Court has also held that even though the examination of

the witnesses has been closed, the same can be reopened in exercise of the power under Section 151 of the CPC. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the Court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. The inherent power of the Court is not affected by the express power conferred upon the Court under Order XVIII Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications. It is submitted that therefore the invocation of the inherent power of the learned Trial Court under Section 151 of the CPC for allowing PW 1 to submit his examination-in-chief was permissible. The learned Trial Court however refused to allow the said prayer though proceeded to allow submission of additional documents under Order VII Rule 14(3) of the CPC, which would be meaningless if permission is not granted in favour of the plaintiff to adduce himself as witness. Therefore, this Court may grant one indulgence to the plaintiff to adduce himself as witness subject to any conditions.

5. Learned senior counsel for the respondent has strongly opposed the prayer and objection has been filed.

6. Learned counsel for the petitioner submits that respondent is a Sub-Inspector of Police who had taken action in discharge of his official duty against the petitioner concerning the driving licence as per the orders of the

superiors. Being aggrieved thereby, the plaintiff/petitioner herein has instituted a money suit on several heads including defamation. It is an abuse of the process of the Court to prosecute a public servant who was doing his official duty. The order dated 03.02.2024 by which the examination-in-chief was closed has not been made subject matter of challenge and the same was passed after five consecutive adjournments to the plaintiff to adduce his evidence. However, learned counsel for the petitioner is at a loss to explain as to why the learned Trial Court has allowed the plaintiff to adduce additional documents under Order VII Rule 14(3) of the CPC when at the same time, it has refused to allow him to submit his examination-in-chief.

7. I have considered the submission of learned counsel for the parties.

The conspectus of facts which have been noted hereinabove present a peculiar situation where the learned Trial Court, by the impugned order, has allowed the prayer of the plaintiff/petitioner to adduce additional documents under Order VII Rule 14(3) of the Code, but not granted permission to file his examination-in-chief. In that way, the order of the learned Trial Court allowing the plaintiff to submit additional documents would be meaningless and cannot be given effect to. Section 151 of the CPC can be invoked in circumstances which justify reopening of evidence as per the decision of the Apex Court rendered in the case of **K.K. Velusamy** (supra)¹, even in presence of specific provisions such as Order XVIII Rule 17 of the CPC. The suit is of the year 2022. The case of course has been pending on this issue for more than one year.

¹ (2011) 11 SCC 275

8. Taking into account the totality of facts and circumstances and that the learned Trial Court has itself allowed the prayer of the plaintiff to submit additional documents under Order VII Rule 14(3) of CPC, and not granting permission to the plaintiff to adduce his examination-in-chief to adduce those documents would amount to putting a bar on giving effect to its own order, this Court is of the considered view that one indulgence be granted to the plaintiff to adduce himself as witness on the very next date. Keeping into regard the background facts, this would be subject to payment of cost of Rs.7,500/- in favour of the defendant on the next date fixed. The learned Trial Court would not grant any further adjournment for adducing witness on behalf of the plaintiff. The defendant would also endeavour to examine the plaintiff witness on the same date and thereafter he may be discharged. The impugned order dated 19.09.2024 so far as it relates to refusal of the prayer for allowing plaintiff to adduce his witness is set aside.

9. The instant civil revision petition is disposed of in the manner indicated hereinabove. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

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