

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 106 of 2015

North East Transmission Co. Ltd.
(A Company Registered under the Companies Act)
Having its office at
1st Floor Ambience Corporate tower,
Ambience Mall, Ambience Island,
NH-8, Gurgaon – 122001,
Haryana
Its Local Office at
C/o. Power Grid Corporation of India Ltd.
T/L Construction Office,
Shyamali Bazar
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura.

..... *Petitioner*

- Vs. -

1. Shri Narayan Chandra Roy
S/O. Lt. Amar Chandra Roy
Of Vill. Purba Palatana,
P.O. Palatana, P.S. Kakraban,
Sub-Division – Udaipur,
Dist. Gomati Tripura.
2. The State of Tripura
Represented by the Secretary,
Dept. of Power,
New Secretariat Complex,
P.O. & P.S. New Capital Complex,
Dist. West Tripura.

..... *Respondents.*

CRP 107 of 2015

North East Transmission Co. Ltd.
(A Company Registered under the Companies Act)
Having its office at
1st Floor Ambience Corporate tower,
Ambience Mall, Ambience Island,
NH-8, Gurgaon – 122001,
Haryana
Its Local Office at
C/o. Power Grid Corporation of India Ltd.

T/L Construction Office,
Shyamali Bazar
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura.

..... *Petitioner*

- Vs. -

1. Shri Bimal Chandra Roy
S/O. Lt. Amar Chandra Roy
Of Vill. Purba Palatana,
P.O. Palatana, P.S. Kakraban,
Sub-Division – Udaipur,
Dist. Gomati Tripura.
2. The State of Tripura
Represented by the Secretary,
Dept. of Power,
New Secretariat Complex,
P.O. & P.S. New Capital Complex,
Dist. West Tripura.

..... *Respondents.*

CRP 108 of 2015

North East Transmission Co. Ltd.
(A Company Registered under the Companies Act)
Having its office at
1st Floor Ambience Corporate tower,
Ambience Mall, Ambience Island,
NH-8, Gurgaon – 122001,
Haryana
Its Local Office at
C/o. Power Grid Corporation of India Ltd.
T/L Construction Office,
Shyamali Bazar
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura.

..... *Petitioner*

- Vs. -

1. Shri Ajit Nag,
S/O. Lt. Raimohan Nag
Of Vill. Bagma,
P.O. Bagma, P.S. R.K. Pur,
Dist. Gomati Tripura.
2. The State of Tripura
Represented by the Secretary,

Dept. of Power,
New Secretariat Complex,
P.O. & P.S. New Capital Complex,
Dist. West Tripura.

3. Joint Production Commissioner NRETC
Rubber Board, Rubber Board Complex,
Bhallukka Tilla, P.O. Kunjaban,
Dist. West Tripura.

..... *Respondents.*

CRP 109 of 2015

North East Transmission Co. Ltd.
(A Company Registered under the Companies Act)
Having its office at
1st Floor Ambience Corporate tower,
Ambience Mall, Ambience Island,
NH-8, Gurgaon – 122001,
Haryana
Its Local Office at
C/o. Power Grid Corporation of India Ltd.
T/L Construction Office,
Shyamali Bazar
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura.

..... *Petitioner*

- Vs. -

1. Shri Kshetra Mohan Roy
S/O. Lt. Kamini Kumar Roy
Of Vill. Purba Palatana,
P.O. Palatana, P.S. Kakraban,
Sub-Division – Udaipur,
Dist. Gomati Tripura.
2. The State of Tripura
Represented by the Secretary,
Dept. of Power,
New Secretariat Complex,
P.O. & P.S. New Capital Complex,
Dist. West Tripura.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioners : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. Suman Bhattacharjee, Advocate.

For the respondent : Mr. D. Bhattacharjee, Advocate.
Mr. A. Pal, Advocate.

Date of hearing & : 14.10.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

These four petitions are being disposed of by a common judgment since the questions of law and fact involved are identical.

2. The respondents in all the cases have filed petitions claiming damages/compensation under the Indian Telegraph Act. In all the cases claimant-respondent No.1 filed the examination-in-chief of their witness and also produced the witness for cross-examination on 19.06.2015. Counsel for the petitioner who is the main contestant before the trial Court were not present on that day and an application was filed that since the counsel for the petitioner is not present the cases may be adjourned. This request was not accepted and the evidence of the claimant-respondent No.1 was closed without cross-examining their witness and the case was fixed for recording the evidence of the petitioner which

was respondent in the Court below. Thereafter, the respondent on 22.07.2015 produced its own witness and also filed an application under Order XVIII Rule 17 praying to the trial Court that the witnesses examined on behalf of the claimants (respondent No.1 herein) be recalled for cross-examination by the present petitioners. This application was rejected by the impugned order. Hence, these petitions.

3. The main ground raised by Mr. S.M. Chakraborty, learned senior counsel is that the petitioners have engaged counsel and the counsel was not present. An application had been filed before the trial Court for adjourning the matter but the trial Court did not accept that application and therefore this led to the filing of the application under Order XVIII Rule 17 for recalling the witness.

4. On behalf of the respondent, it is contended by Mr. A. Pal, learned counsel for the respondent No.1 in CRP No.108 of 2015 that in terms of Order XVIII Rule 17, the witness cannot be recalled except to clarify issues. He has placed reliance upon the judgment of the Apex Court in **Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate : (2009) 4 SCC 410**, wherein the Apex Court held as follows:-

"25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify and doubts which it may have with regard

to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined."

"28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC."

5. Reference has made to earlier judgments and it has been stated that the Court can recall the witness to clarify doubts. These observations have to be appreciated in the light of the fact situation in that case. In the Apex Court, the main point raised was that the power under Order XVIII Rule 17 can only be exercised *suo moto* by the Court and not on the basis of application filed by any one of the parties. It was in this context that the observations in Section 25 are made.

6. The language of Order XVIII Rule 17 reads as follows:-

"17. Court may recall and examine witness. – The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."

This language leaves no manner of doubt that the Court is entitled any stage of the proceedings to recall any witness who has been examined and put such questions to him as the Court thinks fit. It is true that this power is not to be exercised to fill up the lacuna in the case but the question is whether the party

should suffer because it's counsel was not present in Court on that particular date. A party in legal proceedings engages a counsel. It is the duty of the counsel to appear on a particular date. The counsel could not appear for some reasons and had filed that application for adjournment of the case. Heaven would not have fallen if the case have been adjourned and I find that the petitions were of the year 2013. These are not very old petitions.

7. It would be pertinent to mention that the examination-in-chief of the witnesses was filed on that very date and the counsel had moved an application for adjournment. I fail to understand how the trial Court could have written that many opportunities had been given when that was the first date on which examination-in-chief was filed. Cross-examination could not have been done earlier to that and many dates would have been given only to the plaintiff to file their examination-in-chief.

8. Furthermore, in ***Salem Advocate Bar Association vs. Union of India : (2005) 6 SCC 344***, the Apex Court has clearly held that even if these powers do not exist under Order XVIII Rule 17 then under Section 151 CPC such powers can be exercised. The Court always has inherent powers to do justice between the parties. No party should be denied justice because of the fault of its counsel. This was one of those cases where the claimants could have been compensated by payment of costs.

Therefore, I am of the considered view that these petitions to be allowed. The same are accordingly allowed. The order 22.07.2015 is set aside and the learned trial Court is directed to recall the witness examined by the respondent No.1 (petitioner before the trial Court in all the cases) fix a date for their cross-examination and permit the petitioners-North East Transmission Co. Ltd. to cross-examination the witnesses. These petitions are allowed subject to payment of Rs.2,500/- (Rupees Two thousand five hundred) as costs the original claimant(s) (respondent No.1 in the present cases) in each of the cases.

9. This Court has been observing that in Tripura, the practice is that on the date fixed for examination of the parties, the parties file the affidavits of the witnesses. Sometimes these affidavits run into a large number of pages. It is not humanly possible for the counsel for the opposite side to read all these affidavits in Court and effectively cross-examine the witnesses. When oral statements are recorded in Court, the counsel who has to cross-examine is observing the demeanour of the witnesses and the statement is being recorded in his presence. Therefore, he can cross-examine the witnesses. In cases where affidavits are filed it would be appropriate that on one date the affidavit should be filed with copies to the other side and thereafter, a date is fixed for cross-examination of the witnesses so that they can be properly and effectively cross-examined.

Therefore, a direction is given to all the Courts in the State of Tripura to follow the aforesaid directions and to ensure that either the copies of the affidavits are made available to the opposite counsel/party at least one week before the date fixed for examination of the witness or another date is given for cross-examination of witnesses.

10. Send down the L.C.Rs forthwith.

11. The Registrar General is directed to send a copy of this judgment to all members of the Tripura Judicial Service for compliance.

CHIEF JUSTICE

sima