

THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.115 OF 2015

Petitioner :

Shri Swapan Kumar Paul,
Managing Director, Rajarshi Motors Pvt. Ltd.
P.O. Chandrapur, Agartala, Tripura West.

By Advocates :

Mr. A.K. Bhowmik, Sr. Advocate.
Ms. A. Banik, Advocate.

Plaintiff Respondents :

Legal heirs of Dipti Das

1.(a) Shri Bidhu Bhushan Das,
Son of Late Birendra Kumar Das,
H/O Dipti Das,

1(b) Shri Bikash Das,
S/O Shri Bidhu Bhushan Das

1(c) Shri Mihir Lal Das,
S/O Shri Bidhu Bhushan Das,

1(d) Sri Manik Lal Das,
S/O. Sri Bidhubhusan Das,

1(e) Smti. Purnima Rani Baidya (Das)
D/O. Sri Bidhu Bhushan Das.

All are residents of Village South
Nayapur, P.S and P.O. Dharmanagar,
District- North Tripura.

Defendant Respondents :

2. Sri Anup Kumar Baidya,
Finance Manager,
M/S Rajarshi Motors Pvt. Ltd.
P.O. Chandrapur, Agartala, Tripura West.

3. Shri Subrata Paul, General Manager,
M/S Rajarshi Motors Pvt. Ltd.
PO. Chandrapur, Agartala, Tripura West.

4. Shri Abhijit Dey, Staff (Incharge)
Dharmanagar Office,
M/S Rajarshi Motors Pvt. Ltd.,

C/O Late Rabi Roy, Rajbari,
Dharmanagar, P.O. Dharmanagar,
North Tripura.

By Advocates :

Mr. KN Bhattacharji, Sr. Advocate.
Mr. R.C. Deb, Advocate.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **14.10.2015**

Whether fit for reporting : **NO**

JUDGMENT & ORDER(ORAL)

This petition is directed against the order dated 20.08.2015 whereby the learned trial Court has closed the evidence of the defendant. The order reads as follows:

"Case No.MS. 07 of 2007

Order Dated 20.08.2015

None appeared on behalf of the plaintiff.

Learned Advocate Mr. S.R. Dey appearing for the defendant No.1 filed an application stating, interalia, that the defendant No.1 Swapan Kr. Paul being out of station could not appear to deposed.

Heard learned Advocate for the defendant.

Perused the record.

This is a suit pending for disposal since 2007. the plaintiff's evidence in this suit was closed on 11.09.2013. Thereafter inspite of having reasonable opportunities vide., order dated 05.10.2013, 17.12.2013, 29.01.2014, 01.03.2014, 29.05.2014, 03.07.2014, 01.08.2014, 09.09.2014, 13.11.2014, 08.04.2015, 19.05.2015 i.e. for 11(eleven) occasions failed to adduce evidence. I, therefore, find no justification to give further opportunity to the defendant to adduce evidence. Accordingly, defendants evidence is hereby closed.

Fix 04.09.15 for hearing argument."

I fail to understand how this order could have been passed when the plaintiff was not present. The only option before the trial Court was to either dismiss the suit in default or to adjourn

it to another date. There could have been no effective order passed in the absence of the plaintiff. The trial Court could not have, in the absence of the plaintiff who was not present to cross examine the defendant, closed the evidence of the defendant.

(2) However, the trial Court is absolutely right that the defendant has been totally negligent and has been delaying the matter on one pretext or the other. The first date fixed for evidence of the defendant was 05.10.2013 when the defendant prayed for time. Thereafter, the case was listed on 17.12.2013 when again the counsel for the defendant prayed for time. The case was then adjourned to 29.01.2014. Again the defendant prayed for time. On the next date i.e. on 01.03.2014 both parties prayed for time. On 01.08.2014 another date was prayed for by the counsel for the defendant. On 09.09.2014 counsel for defendant No.1 was present along with one witness but the witness was discharged at the request of counsel for the plaintiff.

(3) Thereafter, on 13.11.2014 the defendant's witness Shri Swapan Paul was present. He was partly examined and the case was adjourned to 15.12.2014. Surprisingly on 15.12.2014 an application was filed under Order VI Rule 17 for amendment of the Examination-in-Chief. I fail to understand how a counsel can even advise a client to file such an application. Order VI Rule 17 applies to pleadings and not to evidence and this application was totally misconceived. It should have been rejected on the first date itself but it took the Court 3(three) dates to dispose of this application. Thereafter, the case was fixed for defendant's evidence on 08.04.2014 but again request was made that defendant No.1 is out

of the State. The next effective date was 20.08.2015 when the impugned order was passed. There are seven effective dates given to the defendant to produce his evidence. The defendant No.1 Swapan Paul was only present on one date and on other dates he was not present.

(4) It appears that the petitioner Swapan Paul thinks that he can appear in the Court at his own convenience as and when he feels like and he is not bound by the dates given by the Court. I would have not hesitated to uphold the order of the trial Court but for the fact that it has been passed in the absence of the plaintiff. Only on this ground the revision petition is allowed. The case is fixed before the trial Court on 02.12.2015, on which date Mr. Swapan Paul shall appear before the trial Court for his cross examination. He shall also pay costs of Rs.5,000/- to the plaintiff on or before the said date. If he does not pay the costs or does not appear before the trial Court on 02.12.2015 his evidence shall be closed. If he appears then he shall be cross examined and thereafter the matter shall proceed in accordance with law.

(5) The Civil Revision petition stands disposed of in the aforesaid terms.

(6) Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh