

04.12.2019
Sl.. No. 16
Ct. No. 01
R.PAN

CALCUTTA HIGH COURT

In the Circuit Bench at Jalpaiguri

C.O. No. 46 of 2019

Amar Krishna Chowdhury

-Vs-

Ganesh Triparthi

Mr. Amales Ray

Mr. Deborshi Dhar

... For the Petitioner

Mr. Arun Kumar Sarkar

... For the Opposite Party

The present application under Article 227 of the Constitution of India has been preferred challenging orders dated 14th June, 2019 and 29th June, 2019 passed by the learned Civil Judge (Junior Division), Siliguri in O.C. (Eviction) Suit No. 3 of 2009.

Drawing the attention of this Court to the order dated 29th June, 2019, Mr. Ray, learned advocate appearing for the petitioner submits that while passing the said order it was *inter alia* observed '*that the suit was pending at the stage of DW but during this 5 years the defendant neglected to adduce evidence on his part*', without considering the fact that the earlier revisional application preferred by the petitioner had been pending before this Court for a substantial period of time. The petitioner cannot be penalized for the delay which had occasioned and cannot be deprived of his right to contest the suit and as such necessary direction needs to be

issued directing the learned Court below to accept his examination-in-chief.

He submits that the petitioner suffers from hearing and speech deficiency and pursuant to the order passed in the earlier revisional application, he submitted an application under Section 119 of the Indian Evidence Act read with an application under Section 151 of the Code of Civil Procedure along with his affirmed examination-in-chief but the same was mechanically rejected solely on the ground of delay and without considering the merits of the said application.

Mr. Sarkar, learned advocate appearing for the opposite party vehemently opposes the contention of the petitioner and submits that the suit for eviction was filed in the year 2009 and to delay the disposal of the eviction suit, the petitioner/defendant took repeated adjournments. The delay, which had occasioned, is attributable to the petitioner and such long pendency of the litigation has caused severe prejudice to the opposite party. The petitioner could not disclose any special or extraordinary circumstances, to obtain further adjournment on 14th June, 2019. The petitioner's conduct lacks *bona fide* and as there is no infirmity in the orders impugned, the revisional application is liable to be rejected. In support of such contention reliance has been placed upon the provisions of Order 17 Rule 1 of the Code of Civil Procedure (in short, CPC) and the judgment delivered in the case of *Salem Advocate Bar Association*,

Tamil Nadu –vs- Union of India, reported in *AIR 2005 SC 3353*.

In reply, Mr. Ray submits that a last opportunity be given to the petitioner to adduce evidence on his part, subject to payment of appropriate costs.

Records reveal that the suit was preferred in the year 2009. The first date fixed for examination-in-chief of DW1 was 18th July, 2014. The Court thereafter granted repeated adjournments and as a last chance date was fixed on 17th November, 2016. The petitioner thereafter submitted the examination-in-chief through his constituted attorney. The opposite party filed an application objecting to such prayer. The said application was allowed on 24th July 2017. To further delay the matter, the petitioner preferred a revisional application but this Court did not interfere with the said order and the revisional application was disposed of on 25th October, 2017 observing that the defendant/ petitioner will offer himself to be examined as DW1 and if it is found that he is suffering from hearing deficiency or speech impairment, the lower Court will adopt the procedure laid down in Section 119 of the Evidence Act. In spite of such direction, the petitioner went on taking adjournments and the last adjournment petition was allowed by an order dated 10th April, 2019 subject to payment of cost of Rs.700/-. No such cost was deposited. Instead, a further application was filed by the petitioner with a prayer to waive the cost imposed. The said application was rejected on 14th June, 2019. Thereafter on 29th June, 2019 an application was

filed by the petitioner enclosing the examination-in-chief by way of an affidavit. The same was, however, not accepted by the learned Court. From the said sequence of facts it is explicit that there had been a deliberate intent on the part of the petitioner to delay the proceedings.

In the case of *Salem Advocate Bar Association* (Supra) considering the provisions of Order 17 Rule I of the Code of Civil Procedure it was observed that “*grant of any adjournment let alone first, second or third adjournment is not a right of a party. The grant of adjournment by a Court has to be on parity showing special and extraordinary circumstances. It cannot be in routine*”.

Applying such principles to the facts of this case, I am of the opinion that the refusal of the learned court below to exercise discretion in favour of the petitioner is neither arbitrary nor perverse. The impugned orders are neither manifestly incorrect nor palpably absurd. The rejection of the petitioner’s prayer does not suffer from any patent error warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Tapabrata Chakraborty, J.)