

08.03.2021
SL No.24
Court No.12
(gc)

**FMAT 200 of 2020
With
CAN 1 of 2020
(Old No: CAN 2418 of 2020)**

**Susila Pipara
Vs.
Raj Kumar Pramanik & Ors.**

(Via Video Conference)

Mr. Dulal Dey,
...for the Appellant.

The appeal and the application are taken up together for consideration and disposed of by this common order.

The appeal is arising out of an order of remand by which the Trial Court shall fix a date with the consent of both the parties for cross-examination of DW-1 and fix another date for hearing of argument and to pass a fresh judgment after considering the evidence adduced by both the parties and documents produced by the parties as soon as possible according to law.

Learned Counsel for the appellant submits that while the Appellate Court has noticed that the defendants took several opportunities to produce DW-1 and the learned Trial Judge was completely exasperated due to such wilful and deliberate act of the defendants to delay the trial could not be given opportunity for cross-examination of DW-1.

We have heard the learned Counsel for the appellant. We have perused the order under appeal. It appears that the defendants were given several opportunities for production of DW-1. It is the fact that the Trial Court

granted enough opportunities to the defendants to produce DW-1. However, it appears that due to some unavoidable circumstances, DW-1 could not turn up for cross-examination.

On such consideration to do the complete justice to the matter, an opportunity was given to the defendants to produce DW-1 for cross-examination.

Under such circumstances, we do not find any reason to interfere with the order passed by the Additional District Judge, Birbhum. However, we direct the Trial Court to fix a firm date according to the convenience of the Court and if on that date DW-1 is unable to appear and the reason for non-appearance is not unavoidable, the impugned order passed by the learned Trial Judge shall remain undisturbed. However, it is needless to mention that in the event DW-1 is cross-examined then the Trial Court shall fix a short date for argument as may be necessary upon cross-examination of DW-1 and dispose of the suit at the earliest preferably within a period of four months from the date of communication of this order by either of the parties.

The appeal being FMAT 200 of 2020 and the stay application being CAN 1 of 2020 (Old No: CAN 2418 of 2020), accordingly, stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)