

03.03.2021
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C.O. 437 of 2021
(Through Video Conference)

Salim Akhtar
Vs.
Irfan Javed & ors.

Mr. Goutam Chakraborty
Mr. Anirban Mitra
Ms. Saberi Saha

...for the Petitioner

Mr. Sanjay Mukherjee
Mr. Ismail Nehal
Md. Ghalib Rizwan

... for the respondent nos1 & 2

Sk. Md. Galib

.... For the Board of Auqaf

This revisional application has been filed against an order dated January 27, 2021 passed by the learned District Judge, Waqf Tribunal, West Bengal, by which an application under Order 18 Rule 17 of the Code of Civil Procedure filed in Title Suit No.17 of 2018 has been allowed.

Mr. Goutam Chakraborty, learned Advocate appearing for the petitioner submits that when the evidence of the P.W.1 was closed and at this juncture recalling of a witness under the provision of Order 18 Rule 17 of the Code of Civil Procedure for the purpose of producing additional documents was not

permitted and such practice should be strictly deprecated. Attention was drawn to the application for recalling.

Mr. Sanjoy Mukherjee, learned Advocate appearing for the opposite party/plaintiff submits that by way of recalling the plaintiff only wanted to tender certain documents as exhibits which are necessary for adjudication of the dispute specially because the argument had not commenced.

Mr. Galib, learned Advocate appearing on behalf of the Board of Waqf submits that recalling a witness and allowing a witness to tender certain documents as exhibits would not automatically mean that the documents have been proved.

Having considered the submissions made by the learned Advocates for the respective parties, I find that the documents sought to be tendered before the learned Court below and for marking the same as exhibits are certified copies of orders and judgements of the High Court. Photostat copies have also been filed in the learned Court below and have been marked exhibits with objection. The other two documents which are sought to be filed are certified copies of Register of Firms and a Deed of Dissolution of Partnership.

It is settled law that in order to cut short a process of litigation, documents which are sought to be tendered by a

party, should be accepted as exhibits and marked, but the probative value of the same should be decided at the time of final hearing of the suit.

The fact that the plaintiff has been allowed to tender these documents as exhibits on recall, does not mean that the plaintiff will not be required to prove the same in accordance with law and the provisions of the Indian Evidence Act. The petitioner will have the liberty to cross-examine the plaintiff on all points sought to be urged on the basis of the documents to be tendered and of marked as exhibits. The probative value of these exhibits will be decided at the final hearing.

Under such circumstances, this revisional application is disposed of, without any interference but with the modification as directed hereinabove. The learned Court below will proceed in accordance with law.

This Court has not gone into the merits of the case on of the relevance of the documents sought to be tendered. It is made clear that the plaintiff has undertaken before this Court that no further document will be placed before the Court below hereafter.

(Shampa Sarkar, J.)