

9th August,
2021
(AK)
18

C.O. 577 of 2021

**Ismile Sk
Vs.
Sajahan Mondal**

(Via video conference)

Ms. Deblina Lahiri
Ms. Samapti Roy
Mr. Mrinmoy Chattrjee
... For the Petitioner.

Mr. Dilip Kumar Ghosh
...For the Opposite Party.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner contends that the trial court acted without jurisdiction in adopting a hyper-technical approach in rejecting the petitioner's prayer for recall of an earlier order, whereby the trial court had closed the evidence of the parties, due to absence of the defendant/petitioner to face cross-examination.

It is submitted that, since a valuable right of the petitioner will be lost in the process, the trial court ought to have taken a lenient approach in permitting the petitioner to cross-examine himself, if necessary, upon terms being imposed.

Learned counsel appearing for the plaintiff/opposite party submits that the petitioner is a habitual defaulter as far as attending the matter before the court below is concerned.

It is shown from the order sheet that the trial court had recorded, in an order previous to that of the impugned order, that for the last eight consecutive dates over a period of nine months, prior to passing of the impugned order, the petitioner had taking unnecessary adjournments. Hence, the trial court exercised its judicial discretion well within the limits of law.

Rather, in the event the application of the petitioner for being cross-examined at such belated stage was allowed, the same would amount to an abuse of the process of court.

It is evident from the record that, despite the risk that the petitioner would lose valuable rights in view of the impugned order, there is no fault on the part of the trial court in rejecting the prayer for recall of the order closing arguments, since the said order had only been passed after the petitioner had prayed for adjournments on eight consecutive occasions over a prolonged period of nine months.

Such dilatory tactics adopted by the petitioner was rightly deprecated by the trial court, since the same was patently harassing.

However, keeping in view that the implication of the order might necessitate multiplicity of proceedings and further delay in completion of the litigation, since, in the event the evidence is closed at this juncture, the petitioner will be able to canvass such point as a ground in an appeal, if preferred by either of the sides against the final decree passed in the suit.

That apart, in the absence of cross-examination, there may be certain handicaps faced by the appellate court, if approached ultimately against the final decree.

However, keeping in mind the tremendous harassment caused to the plaintiff/opposite party by the defendant/petitioner, but mellowing the same down due to the conceivable financial distress of the petitioner, who is a cultivator by occupation, as appearing from the affidavit of the instant revisional application, particularly during these pandemic times, an amount of Rs.20,000/- as costs would be adequate to compensate the harassment caused to the petitioner.

Accordingly, for the ends of justice, C.O. 577 of 2021 is disposed of by setting aside the impugned order dated March 11, 2020 and directing the defendant/petitioner to be peremptorily present on the next date fixed by the trial court for hearing of the suit for the purpose of facing cross-examination by the plaintiff/opposite party.

It is made clear that such opportunity is the last chance in such regard for the defendant/petitioner and, in the event the petitioner fails to appear on the said date for cross-examination, this revisional application will be deemed to stand automatically rejected and the order closing the evidence sustained, without further reference to court.

The above order is conditional upon costs of Rs.20,000/- being paid by the petitioner to the opposite party within a fortnight from date, failing which also, this revisional application will be deemed to stand automatically rejected, without further reference to court.

The parties shall act on the written communication of the learned advocates, accompanied by a server copy of this order, instead of insisting upon prior production of a certified copy.

Interim orders, if any, passed earlier in the present revisional application stand automatically vacated.

The Trial Judge is requested to dispose of the suit from which the present revision arises as expeditiously as possible, preferably within April 30, 2022.

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

(Sabyasachi Bhattacharyya, J.)