

27.01.2021
Court No. 19
Item No.2
CP

C.O. 1082 of 2020

Sri Dibakar Roy
vs.
Arun Kumar Das & anr.

Mr. Harpal Singh
Mr. Debraj De

.....for the petitioner.

Mr. Jahar Chakraborty
Mrs. Sabita Mukherjee Roy Chowhuri

.....for the opposite parties.

This revisional application has been filed by the judgment debtor who has suffered a decree of eviction, recovery of khas possession and damages dated November 10, 2017. The said decree was passed by the learned Judge, IInd Bench, City Civil Court at Calcutta in Title Suit No. 226 of 2012. An appeal was preferred which was dismissed. The plaintiffs put the decree into execution by filing Title Execution Case No. 3 of 2018. Writ of delivery of possession was issued on January 29, 2018. The bailiff went to the premises but could not vacate the same due to obstruction created by the petitioner. Report to that effect was filed by the court bailiff with a prayer for police help. An application for police help was filed by the decree holders. Examination-in-chief was filed on behalf of the decree holders through their constituted attorney, namely, Smt. Meenakshi

Basak. As the petitioner failed to cross-examine the PW-1 and PW-2 on the date fixed, the learned court closed the evidence of PWs. Aggrieved, the petitioner preferred C.O. 3967 of 2019 by this court, which was disposed of on December 3, 2019 with a direction upon the learned Judge, IInd Bench, City Civil Court at Calcutta to afford one last opportunity to the petitioner/judgment debtor to cross examine the PW-1 and PW-2 on the next date, i.e, December 4, 2019, when the Title Execution Case No. 3 of 2018 had been fixed for further hearing. Thereafter, the judgment debtor cross-examined the PW-1 and PW-2 as directed by this court. The said cross-examination took place on December 4, 2019. After two months from the closure of the cross-examination, the petitioner filed another application for a direction upon the service provider as well as the employer of Meenakshi Basak to produce attendance register and mobile number of Meenakshi Basak, respectively, daughter/constituted attorney of the plaintiffs who had deposed on their behalf in the execution proceedings.

The learned court below rejected the said application on the ground that as per the direction of this court the cross-examination of PW-1 and PW-2 was completed by the judgment debtor on the date fixed and only one last opportunity was given to the petitioner on that date. It is also on record that at

that point of time Rs. 8,50,000/- was due and payable by the judgment debtor as per the decree, and now it is informed that the said amount has gone up to Rs.13,44,000/- (principal amount).

By the order dated February 27, 2020, the learned Judge, IInd Bench, City Civil Court at Calcutta rejected the application for calling the service provider and the employer of the witness of the plaintiffs, to depose upon examination and fixed March 17, 2020 for examination of the petitioner. This revisional application has been filed by the petitioner/judgment debtor being aggrieved by the order dated February 27, 2020.

I do not find any illegality and/or irregularity in the order impugned. Asking for a direction from the court below to call the employer of the witness of the plaintiffs in a proceeding for execution of an eviction decree seems utterly unnecessary and preposterous especially because there is nothing on record to show that the employer of the witness was in any way connected to the '*lis*'. Similarly, the judgment debtor did not have any right to examine the service provider of the mobile number of a witness upon refusal of such witness to disclose her private mobile number. The judgment debtor could not have asked the court to call the service provider for such purpose. The witness has all rights to her privacy and the learned court correctly held that the

prayer was irrelevant, unreasonable and nothing but a dilatory tactic.

Mr. De, learned advocate for the petitioner, submits that in view of the discrepancies in the statements made by the witness, the fact whether the witness attended the office on a particular day was necessary and the same could be ascertained only from the employer and the location of the witness could be understood by calling the service provider.

Asking the service provider to disclose the personal mobile number of a customer, in my opinion, is irrelevant for the determination of the application for police help. These prayers, if allowed, would lead to breach of the right of privacy. This action of the defendant also discloses an attempt to stall the proceedings.

If there are any discrepancies and if there are any contrary statements made by the witnesses, the judgment debtor can always take advantage of the same at the hearing of the application for police help. The judgment debtor has been trying to delay the proceeding. The appeal filed by the judgment debtor in 2018 from the decree was dismissed for default and for non-compliance of the order dated September 20, 2019. Almost three years have passed since then.

The order impugned is upheld without calling for any interference.

The revisional application is disposed of.

The learned court below is directed to proceed expeditiously as already directed by this court without allowing any unnecessary adjournments to either of the parties.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)