

01.12.2021

Sl. No. 5

Court No.25

B.M.

C.O. 959 of 2019

Moni Manjusha Nandy

Vs.

Prabir Kumar Nag & Anr.

(Via Video Conference)

Mr. Radha Nath Nandy ... for the petitioner
(in person- as power of attorney holder)

Mr. Sayan Sinha
Mr. Mainak Swarnokar ... for the opposite parties

Affidavit of service filed be kept on the record. In response thereto Mr. Sayan Sinha, learned Advocate for the opposite parties appears and supports the order impugned.

The petitioner has assailed the impugned order No.46 dated 17.01.2019 passed by XIII Bench, City Civil Court, Calcutta on the ground that the plaintiff's application under Order 3 Rule 2(a) of the Civil Procedure Code, 1908 was rejected on the observation that the application was neither supported by an affidavit nor it was duly verified.

I have heard Mr. Radha Nath Nandy, who appears in person on behalf of the petitioner as power of attorney holder but I am not convinced about the application filed before the trial court as no such copy of such application has been annexed to this revisional application to ascertain as to whether the application so filed by the

petitioner before the Trial Court was duly verified or not. Since, the application was neither verified nor supported by an affidavit, learned Trial Court rightly rejected the application as it was not in the legal form in view of Rule 16 of Civil Rules and Orders of Calcutta High Court, Vol. I which provides that all petitions requiring judicial investigation or determination unless filed with an affidavit in support thereof, should be verified in the manner prescribed by Order 6 Rule 15 of Code of Civil Procedure. This Court finds from the impugned order that date was fixed for completion of cross-examination of DW1 and finds no illegality in the order impugned.

However, the petitioner is directed to appear before the learned Trial Court on the date fixed and to cross-examine the DW-1 at length so as to facilitate the Court to dispose of the suit on its merit.

In the context of the discussion above, the revisional application being C.O. 959 of 2019 is disposed of.

(Shivakant Prasad, J.)