

17,DL,Ct.18.
27.01.2021
AJ.

C.O. 1249 of 2018

Sri Nilmoni Das
-Vs-
Sri Sukdeb Das

Mr. Samir Kumar Datta.
....for the petitioner.

Affidavit of service filed in Court today be kept with the record. None appears on behalf of the opposite party in spite of service.

The defendant in a suit for eviction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against Order No.65 dated May 16, 2017 passed by the learned Civil Judge (Junior Division) at Kalyani, District. Nadia in Title Suit No. 307 of 2009.

The petitioner filed an application seeking recall of D.W. 1 to prove rent receipts and electricity bills of the suit property.

The learned Trial Judge by the order impugned has dismissed the said application holding, inter alia, that in view of the admission of the petitioner that he is a tenant under the plaintiff the documents sought to be proved by recalling D.W. 1 is not necessary.

Learned Counsel for the petitioner submits that the photocopy of the said

documents although were filed but the original documents since were in the custody of the petitioner mistakenly could not be filed. He relying on the decision of the learned Single Judge of the Himachal Pradesh High Court in the case of ***Satinder Singh v. Sukhdev*** reported in **AIR 1999 Himachal Pradesh 72** and the decision of the Supreme Court in the case of ***Rammi alias Rameshwar v. State of Madhya Pradesh*** reported in **(1999) 8 Supreme Court Cases 649** submits that the learned Trial Judge should have consider the said application liberally as those documents are relevant for the purpose of effective adjudication of the suit.

The power of the Court to allow a party to produce evidence which could not be produced at the time when the said party was leading evidence has not been whittled away even after omission of Order XVIII Rule 17A from the Code by the Code of Civil Procedure (Amendment) Act, 1999 w.e.f July 01, 2002. The Court possesses such power under Section 151 of the Code and the said power is absolutely discretionary to be exercised with great care and in a deserving case.

The Supreme Court in the case of ***K.K Velusamy v. N. Palanisamy*** reported in **(2011) 11 SCC 275** had the occasion to discuss the

scope of the power of the Court to recall witnesses and reopen evidence after deletion of Order XVIII Rule 17A of the Code.

The following observation of the Supreme Court in the said report being relevant to the context is quoted below:

“In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination.”

Nonetheless, the requirement of demonstrating that such evidence could not be produced earlier in spite of exercise of due diligence has not been diluted even after the deletion of the provision of Order XVIII Rule 17A of the Code.

In the present case, the petitioner seeks production of some documents when the suit has reached the stage of argument on the ground that mistakenly those documents could not be produced at the time of his evidence. The said

explanation does not qualify the requirement of due diligence.

The decision of the learned Single Judge of Himachal Pradesh High Court relied on by the learned counsel for the petitioner is not applicable in the facts and circumstances in the present case since in the said case in view of the relevancy of the documents sought to be proved the recalling of the witness was considered necessary and was allowed but in the present case the learned Trial Judge found that the tenancy of the petitioner under the opposite party, being an admitted fact, the documents sought to be proved by recalling D.W.1 is not necessary.

The decision of the Supreme Court relied upon by the counsel for the petitioner is also no pointer to the issue involved in the present case inasmuch as in the said decision, the issue was whether the re-examination should be confined to clarification of the ambiguities which have been brought down in the cross-examination, this is not the case here.

In the facts and circumstances of the present case the learned Trial Judge has rightly refused to exercise his discretion to recall the D.W. 1.

The order impugned, therefore, does not call for interference.

C.O. 1249 of 2018 is dismissed. No order as to costs.

The learned Trial Judge is requested to expedite the hearing of the suit.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)