

28.09.2021
(S/L-15)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1660 of 2021

Anwar Jahan Mirza
-Vs-
Noor Hasan & Anr.

Mr. Wasim Ahmed,
Mr. Nayeemuddin Munshi,
Md. Zeeshanuddin

.... For the Petitioner.

Mr. Abhijit Roy,
Mr. Subham Gupta,
Mr. Rajiv Kumar,

... For the Opposite Party.

The defendant in a suit for ejectment is the petitioner of the present application under Article 227 of the Constitution of India which is directed against the order No. 99 dated September 01, 2021 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court in the said suit being Ejectment Suit no. 235 of 2015.

August 23, 2021 was the date fixed for evidence of the petitioner but she did not turn up on the said date, as a consequence thereof, the learned Trial Judge, after rejecting the prayer of the petitioner for adjournment, closed her evidence.

The petitioner thereafter filed an application under Section 151 of the Code of Civil Procedure for recalling of the said order dated August 23, 2021.

The learned Trial Judge by the order impugned has dismissed the said application.

The petitioner is 80 years old and she is claiming that her entire family was busy observing the festival

of Muhharam, as such, there was no one to take her to the Court for which she could not appear before the learned Trial Judge on August 23, 2021.

The explanation offered by the petitioner has some substance, particularly, in view of her age, moreover ends of justice demands that she should be given a final chance to adduce evidence in the suit.

The order impugned for the aforesaid reason is set aside, consequently, the order dated August 23, 2021 is recalled.

The petitioner is permitted to tender her evidence-in-chief and documents relied on the next date fixed in the suit which is on October 07, 2021. The petitioner must conclude her evidence-in-chief on the said date, in default, her evidence would be closed.

It is expected that the cross-examination of the said witness would also be completed expeditiously.

The learned Trial Judge is requested to conclude the evidence of the parties as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

C.O. 1660 of 2021 is allowed without any order as to costs.

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.)