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20.12.2021  
Ct. 21  
AB

**C.O. 2208 of 2021**  
**(Via Video Conference)**

**CESC Ltd. & Anr.**  
**-Vs-**  
**Manas Das**

Mr. Joydeep Kar,  
Mr. Soumya Majumder,  
Mr. Debanjan Mukherjee,

... for the petitioners

Being aggrieved by the order of adjournment and mechanically extending interim order of injunction by the Civil Judge, (Junior Division), 2<sup>nd</sup> Court Barrackpore, in Title Suit No. 114 of 2012 the petitioner/employer of the opposite party has preferred this revisional application.

It has been contended that opposite party was appointed as a Station Mazdoor (Mechanical Maintenance) in the year 1991 in his appointment letter the date of birth has been recorded as December, 1961. Suddenly after 20 years of employment the opposite party filed Title Suit No. 114 of 2012 in the Court of Civil Judge (Junior Division), 4<sup>th</sup> Court, Seladah against the petitioner claiming his date of birth to be 10.01.1964 and to note down the same in his service record.

In such suit the opposite party/plaintiff has also filed a petition under Order 39 Rule 1 & 2 read with Section 151 Civil Procedure Code and which was allowed on 09.04.2012 by passing following orders ***“that the defendant company is hereby restraint from giving any effect to the order of retirement of the plaintiff on the basis of wrong recorded date of birth in the appointment letter of the plaintiff till 23.04.2012.”***

That after obtaining such restraining order against the employer the plaintiff is not diligent in getting his lis disposed of by seeking adjournment on one pretext or the other and which is also entertained by the learned Court below. However, it has also been contended during the period from 2016 to 2019 the functioning of the concerned Court was disturbed due to protest by members of Bar Association for its proposed set up being shifted to Barrackpore. Subsequently, due to shifing to Barrackpore, Old Court Building and again within a short span of shifting to the New Court Building at Barrackpore.

That as per official record the opposite party is going to retire in the end of this month and if the interim order continues and if the Court below fails to take up the application filed by the petitioner on Order 39 Rule 4 Civil Procedure Code then there will be multiplicity of proceedings.

Learned Advocate submits that there was a **specific order of Co-ordinate Bench of this Hon'ble High Court passed in C.O. 1694 of 2021 on 24.09.2021 upon the learned Court below to dispose the petition under Order 39 Rule 4 Civil Procedure Code as expeditiously as possible, preferably with a period of one effective working month from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.** Unfortunately, the **learned Court below has bypassed the above direction of the Hon'ble High Court and passed the impugned order dated 13.12.2021** by granting adjournment to the plaintiff opposite party and extending Ad-interim order of injunction and deferring the hearing of petitioner application under Order 39 Rule 4 Civil Procedure Code.

Therefore, the petitioner has prayed that learned Court below be directed to dispose of the injunction petition along with the petitioner's application under Order 39 Rule 4 Civil Procedure Code on 21.12.2021 the day the case is fixed in the Court below.

Perused the materials in record the it is very unfortunate to note that the learned Court below has failed to complete the hearing of the injunction petition an interlocutory application in the last nine years.

For the sake of argument even if it is assume, the concerned court could not function normally due to agitation of the Bar in respect of its shifting from Sealdha to Barrackpore during the period from 2016 to 2019, then this court fails to find any reason what has prevented the learned court below in disposing an interlocutory application from 2012 to 2016 or 2015. This court question itself if it takes more than nine years to dispose of an interlocutory application, then how long the learned court will take to dispose of the suit.

**Since there involves question of change of date of birth of the plaintiff and which as per present service record he will be superannuated in the end of this month. The manner in which the case has been lingered and interim order been extended shows the plaintiff has managed to keep his suit alive even after December 2021 as it appears the suit has not even reached its trial stage.**

**Further, the learned Court below has failed to comply the direction given by the Co-ordinate Bench of this Hon'ble High Court in C.O. No. 1694 of 2021 on 24.09.2021.** *In fact, it is seen from the order dated 13.12.2021, the learned Court below, is not only sympathetic towards the plaintiff by granting adjournments but also extending the interim order of*

*injunction passed in the year 2012 till date and that too ignoring the direction given by the Hon'ble High Court.*

Therefore, the Civil Judge, (Junior Division), 2<sup>nd</sup> Court Barrackpore, is directed to dispose of injunction petition filed by the plaintiff long ago in the year 2012 along with application under Order 39 Rule 4 Civil Procedure Code filed by the defendant/petitioner in Title Suit No. 114 of 2012 **positively by 21.12.2021** and without entertaining any adjournment application, if any, filed by the parties. ***In case the regular P.O. remains absent on the day, then whoever remains in-charge of the 2<sup>nd</sup> Court of Civil Judge, (Junior Division) Barrackpore will hear injunction petition filed by the plaintiff in year 2012 and defendant's petition under order 39 Rule 4 CPC and dispose of on the date fixed.***

I do not find any need to discuss *Karnataka Rural Infrastructure Development Limited Vs. M.C. Subramaniam Reddy*, reported in 2021 SCC online SC 767 referred by the Learned Advocate for the petitioner at this stage as it relates to the issue whether date of birth can be corrected or not at belated stage of service carrier and which is not an issue in the present revisional application.

Learned Advocate for the petitioner is requested to communicate the order of this Court to the learned

Court by placing a copy of this order downloaded from the official website of this Hon'ble Court.

Accordingly **C.O. 2208 of 2021** is allowed. Connected applications are disposed of. Interim order, if any, stands discharged.

There will be no order as to costs.

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

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

( **Kesang Doma Bhutia, J.**)