

S/L 25
27.01.2021
Court. No. 19
GB

C.O. 1426 of 2020

Bipad Taran Mondal & Anr.
Vs.
Kalyani Mondal & Ors.

(Through Video Conference)

*Mr. Prasenjit Mukherjee,
Ms. Sima Ghosh.*

...for the Petitioner.

Mr. Saiful Alam

...for the Opposite Parties.

Affidavit-of-service and information slip filed in Court today be kept with the record.

This revisional application has been filed by the defendant in Title Suit No.15 of 2004, pending before the learned Civil Judge (Junior Division), Additional Court, Suri, District Birbhum.

The petitioner is aggrieved by the order impugned dated February 24, 2020 by which an application filed by the defendant to recall the order of acceptance of the learned Pleader Commissioner's report and to afford an opportunity to cross-examine the learned Pleader Commissioner was rejected. The said order accepting the report was passed on February 4, 2020. The defendant prayed for recalling of the said order with a further prayer to allow the defendant to cross-examine the learned Pleader Commissioner. Both these prayers were rejected by the order impugned.

It appears from the records that the suit was filed in January, 2004. A local investigation was allowed by an order dated July 17, 2011. The learned Pleader Commissioner submitted his report on February 9, 2011. The defendant filed the written objection to the said report on July 19, 2012. Between July 19, 2012 to February 4, 2020, the petitioner/defendant did not feel the necessity to apply before the court to cross-examine the learned Pleader Commissioner.

However, as the report of the learned Pleader Commissioner is admissible in evidence and the defendant has the right to cross-examine the commissioner in terms of Order 26, Rule 10(2) of the Code of Civil Procedure, in my opinion, not allowing the defendant to cross-examine the learned Pleader Commissioner will be contrary to doing substantial justice. Yet the inordinate delay on the part of the defendant in not making any prayer since 2012 for cross-examining the learned Pleader Commissioner cannot be ignored.

Under such circumstances, the order of acceptance of the report of the learned Pleader Commissioner is set aside, as also the order impugned is set aside. The petitioner is granted one last chance to cross-examine the learned Pleader Commissioner and the said cross-examination of the learned Pleader Commissioner shall be completed within a month from the next date fixed. This order shall become operational upon the petitioner depositing a costs of Rs.5,000/, to be

paid by the petitioner through his learned advocate to the learned advocate of the opposite parties appearing in the learned court below. A receipt showing such payment shall be filed in the learned court below. Such payment shall be made within 10 days from date. If the same is not paid within the aforementioned period then the learned court below will proceed with the arguments without granting further chance for cross-examination.

The revisional application is disposed.

Urgent certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)