

SL. 8.

March 19, 2021.

MNS

**CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri**

C. O. No. 19 of 2020

(Through Video Conference)

**Sri Surajit Guha and another
Vs.**

Sm. Soma Sarkar and another

Mr. Tapas Kumar Bhattacharya,
Mr. Dipankar Sen
...petitioner.

Mr. Partha Sarathi Deb Barman,
Ms. Jeenia Rudra

...for the opposite party no. 1.

Learned counsel for the petitioner argues that, by the impugned order, a document tendered by the plaintiff/opposite party no. 1 was marked as Exhibit-8, on the basis of a previous order dated July 11, 2018, which was previously recalled by the trial court itself. Further, the present petitioner was not given an opportunity to cross-examine the witness with regard to the exhibited document, but a mere liberty was given to the petitioner to raise objection, if any, to be recorded in writing and taken into consideration at the time of passing of final order, while adjudging the evidentiary value of Exhibit-8.

Learned counsel appearing for the petitioner argues that such order is palpably illegal and that the document could not have been marked as exhibit in the teeth of the previous order recalling the marking of the said Exhibit-8 on an earlier occasion and in view of not giving the petitioner the opportunity of cross-examination of the witness.

Learned counsel for the opposite party no. 1, in his usual fairness, submits that although the petitioner ought to have been given an opportunity of cross-examination, there was no other option left before the opposite party no. 1, in view of repeated flouting of the trial court's order by the summoned witness.

It is submitted that the opposite party no. 1 is ailing and may not live to see the outcome of the suit due to the delay occasioned without any fault on the part of the opposite party no. 1.

Upon hearing learned counsel for both sides, it is evident from the materials on record that the impugned order was passed *de hors* the law insofar as it relied upon a previous order for dispensation of formal proof of the document, which order had already been recalled by the trial court itself. Secondly, the petitioner ought to have been given an opportunity of cross-examination the witness

upon the witness having proved the document-in-question in accordance with law on being tendered. In the absence of such procedure, the trial Judge acted without jurisdiction and *de hors* the law in marking the document as an exhibit.

However, considering the plight of the opposite party no. 1, who is suffering due to no fault of her own, the Civil Judge (Junior Division) at Jalpaiguri is directed to take appropriate coercive steps of a more stringent nature than merely imposing a fine of Rs. 500/- on the summoned witness for his/her non appearance and nonchalant violation of several notices served from the end of the trial court.

C. O. No. 19 of 2020 is disposed of by setting aside the impugned order in the light of the above direction passed on the trial Judge. The trial court shall be free to take appropriate steps as provided in Order XVI Rule 10(2) of the Code of Civil Procedure to issue a proclamation requiring the witness to give evidence or to prove the document-in-question in accordance with such provision.

It is expected that the said steps would be taken by the trial court at an early date, preferably within three weeks from the date of communication of this order to the court below. The court below

shall also endeavour to dispose of the suit itself thereafter, as expeditiously as possible, preferably within six months from the date of communication of this order to the court below.

The parties will be at liberty to communicate this order to the summoned witness, who is the appropriate representative from the Office of the Block Land and Land Reforms Officer, for the purpose of ensuring compliance of the summons issued to the said witness by the trial court.

The trial court, as well as all parties, are to act on the communication of learned advocates and/or the server copy of this order, without insisting upon prior production of a certified copy thereof.

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

(Sabyasachi Bhattacharyya, J.)

