

29.06.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.109 of 2022

Sri Sudip Pal
Vs.
Sri Rajani Kanta Koley & anr.

Mr. Kushal Chatterjee,
Mr. A. K. Acharyya
...for the petitioner

Mr. Abu Abbas Uddin
...for the opposite parties

The subject-matter of challenge in this revisional application is against the order dated 23rd December, 2021, passed by learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly, in Preemption Misc. Case No.47 of 2004, rejecting the application for recalling order dated 4th December, 2019, thereby closing the evidence of petitioner/pre-emptee.

Admittedly, there is a Pre-emption Case pending, in which, opposite party/pre-emptor has already examined all witnesses on its behalf. On the dates adjourned for adducing evidence by petitioner/pre-emptee, an application for adjournment was taken out stating the serious illness of mother, who was then in death bed. Though the affidavit-in-chief was filed on the date scheduled for adducing evidence by petitioner/pre-emptee while proposing for adjournment by separate application, but that was not considered by the court below, and the evidence of the

petitioner/pre-emptee was closed by order dated 4th December, 2019.

Mr. Kushal Chatterjee, learned advocate appearing for the petitioner submits that the mother of the petitioner had already expired on 31st March, 2021, and because of serious illness of the mother of petitioner, petitioner could not appear before the Court below to adduce evidence.

It is contended by Mr. Chatterjee that rejection of prayer for adjournment was not the perfect consideration of the facts presented and pressed.

It is also contended that for the erroneous rejection of prayer for adjournment, and subsequent rejection of prayer for recalling, the petitioner/pre-emptee would suffer serious prejudice.

Mr. Abbas Uddin, learned advocate appearing for the opposite party/pre-emptor submits that the court below extended several opportunities to adduce evidence by petitioner/pre-emptee, but the same could not be availed of. On the date scheduled for adducing evidence, even after granting several adjournments, the petitioner proceeded to file adjournment petition, not being supported by any medical document, learned advocate for opposite parties argues while supporting the order of learned court below.

Learned advocate for the opposite parties further submits that upon consideration of the conduct

exposed in the record by the petitioner, the court below declined to exercise his discretion showing any further latitude, and thus closed the evidence of petitioner, and set the matter for argument.

In reply, to the objection raised by learned advocate for the opposite parties, Mr. Chatterjee assures this Court that if an opportunity is given directing the petitioner to adduce evidence on a date, to be scheduled by the court below, there will be no prejudice caused to opposite party/pre-emptor.

Having considered the submission of both sides, it appears that the closure of evidence of petitioner was made by the court below upon rejecting his prayer for adjournment, which was basically on medical ground, though not supported by medical document. The mother of the petitioner ultimately left this world on 31st March, 2021.

Upon consideration of the materials placed in the case record, and bearing in mind the submissions raised by both the parties, it appears that if an opportunity is given to petitioner/pre-emptee to adduce evidence on a date, to be scheduled by the court below, that will not cause any prejudice to the petitioner, and if that is ensured, there will be fair adjudication of the dispute, surfaced between the parties, in order to put an end to litigation.

The impugned order dealing with rejection of the prayer for recalling of order dated 4th December, 2019, is set aside without making any alteration of the order dated 23rd December, 2021, pertaining to the proposed amendment being allowed.

This order is recorded in view of the submission disclosed by Mr. Chatterjee that petitioner does not challenge the order allowing the amendment by order dated 23rd December, 2021.

Since Mr. Chatterjee assures this Court that there is only one witness to be examined on a date to be scheduled by the court below, learned court below is directed to collect the evidence of petitioner/pre-emptee on a date, to be scheduled by the court below, subject to his convenience, within one (01) month from the date of communication of this order.

It is further directed that the opposite party/pre-emptor should be provided with sufficient opportunity to cross-examine the witness to be examined by the petitioner on the scheduled date, to be fixed by the court below.

Petitioner is directed to make communication of this order to the court below.

The revisional application stands disposed of with such observation and direction mentioned hereinabove.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)