

11.05.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.697 of 2022

Smt. Mirmala Debi Choubey & ors.
Vs.
Sri Pranab Kumar Banerjee & ors.

Mr. Sukanta Chakraborty,
Mr. Anindya Halder

...for the petitioners

Mr. Saptansu Basu, Sr. Advocate
Ms. Mrinalini Majumdar

...for the opposite party
nos.1 to 3

Affidavit-of-service furnished by the petitioners be
taken on record.

The subject-matter of challenge in this revisional
application is against the orders dated 15th February,
2020 and 13th December, 2021, closing the cross-
examination of P.W.1, even after being recalled, and
thereby posting the suit for argument.

Mr. Chakraborty, learned advocate appearing for
the petitioners/plaintiffs submits that a suit already
instituted for declaration and injunction, for some good
reasons, set out in the petitions for adjournments, the
petitioners could not complete their evidence within
desirable period.

Mr. Chakraborty contends that rejection of
application dated 25th November, 2021 filed by the
petitioners/plaintiffs by the court below would, result

in sheer deprivation in respect of valuable rights of the petitioners/plaintiffs to adduce best possible evidence in terms of the averments set out in the plaint for the desired purpose.

The court below, according to Mr. Chakraborty, has erroneously rejected the application under Section 151 C.P.C., while closing cross-examination of P.W.1, and thereafter, posted the suit for argument.

Per contra, Mr. Basu, learned Senior Advocate appearing for the defendants/opposite parties submits that the court below, upon due exercise of discretion, in view of the conduct of the petitioners exposed in the case record passed order of closure of the evidence of P.W.1, which has been rightly made, and there lies nothing to be interfered with. More so, the discretion exercised by the trial court, being exercised reasonably, rationally and judicially would go uninterfered with.

Mr. Basu, learned Senior Advocate taking recourse to paragraph-‘8’ of a decision rendered by Apex Court, reported in **AIR 1967 Supreme Court 249** delivered in the case of ***Uttar Pradesh Co-operative Federation Ltd. vs. Sunder Bros., Delhi*** submits that whenever the trial court has exercised the discretion, while closing the evidence of plaintiffs, in a judicious manner, the superior Court should not ordinarily interfere with the order impugned, unless arbitrariness

is shown in the order impugned. The discretion, thus exercised by the trial court in the order impugned, passes the test of reasonableness.

Having considered the submission of both sides, it appears that the subject-matter of challenge in this revisional application is founded on the sole question as to whether the trial court has rightly exercised the discretion conferred upon the trial court in a most judicial manner, or not, while closing the evidence of plaintiffs thereby depriving the plaintiffs from adducing the required witnesses in terms of the averments set out in the plaint or not.

It would be relevant here to refer the conduct of the opposite parties, already noted by the trial court in the impugned order, which may be mentioned as hereunder:-

“On perusal of the case record, it appears that the P.W.1 deposed on 02.04.2015 which was his first date of deposition and he was partly examined on that day fixing 14.05.2015 for his further examination and for the next five days he took adjournment and faced his first cross examination on 17.11.2015 and after the several adjournments were taken by the P.W.1 and considering such conduct of P.W.1 his evidence was closed vide order no.208 dated 23.09.2016. The plaintiffs thereafter filed an application for recalling the said order no. 208 dated 23.09.2016 on 11.05.2017 which was rejected by this

Court vide order no.222 dated 09.01.2017 and further vide order no.227 dated 04.12.2017, the order dated 23.09.2016 was recalled and an opportunity was given to the P.W.1 to face further cross examination.

On further perusal of the record it appears that the P.W.1 inspite of getting so many opportunities failed to face cross examination and accordingly vide order no.249 dated 15.02.2020 the further cross examination of P.W.1 was closed fixing 07.03.2020 for D.W. The defendants adduced evidence and after closure of their evidence the instant suit has been fixed for argument vide order no.256 dated 05.02.2021.”

True it is that the conduct of the petitioners/plaintiffs is very revealing, which has been lucidly dealt with by the learned court below, while making closure of the evidence of plaintiffs. Without any controversy, it is a suit of 1999, and taking into the account of the year of institution of suit, such litigation needs to be disposed of expeditiously. Since the plaintiffs have come first to the court seeking justice, the status of the plaintiffs should not be treated to be at higher pedestal than that of defendants/opposite parties, who equally seek justice from the court.

Several adjournments were taken by the petitioners, may be with some good, or frivolous reasons, but the fact remains that there has been

inordinate delay in the disposal of the suit, by reason of the several adjournments being asked for, at the instance of the petitioners/plaintiffs.

Mr. Chakraborty candidly admits that the conduct of the petitioners is not satisfactory, but urges the Court that in the event of the closure of evidence, despite an opportunity being granted, there would be serious consequence, and it will lead to deprivation of valuable rights of the petitioners to adduce the best possible evidence before a court of law. Their entire effort is to adduce evidence expeditiously, and Mr. Chakraborty assures the Court that besides P.W.1, petitioners have another witness to be examined in this case.

Mr. Basu also contends that there has been inordinate delay in the disposal of the suit, but in the event of any opportunity to examine witnesses, still left unexamined, if granted, there should have been a time limit framed so that the logical conclusion of the suit may be reached at an early date.

The submission, so advanced by Mr. Basu, needs to be respected, though the conduct of the plaintiffs is very revealing, but that should not be the one and only ground to deprive them from adducing their best possible witnesses.

The impugned order is set aside giving liberty to petitioners/plaintiffs to produce P.W.1 for his cross-

examination within a date, to be suitably fixed by the court below within three (03) weeks from the date, and after the cross-examination of P.W.1 is over, the date maybe consecutively fixed for examination of another witness for the plaintiffs, still left unexamined.

It is, however, clarified that immediately after conclusion of the evidence of plaintiffs, as discussed hereinabove, the opposite parties/defendants may be provided with an opportunity to adduce their witnesses to controvert the allegations of the plaint, fixing the date within a fortnight thereafter, and the logical conclusion of the suit may be reached with eight (08) weeks thereafter, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this observation/direction, the revisional application stands disposed of.

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.)